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International Trade Commission Notices

DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

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U.S. Customs Service

Treasury Decisions

(T.D. 78-451)

Special Tonnage Tax and Light Money—Customs Regulations Amended

Foreign discriminating duties of tonnage and impost with respect to vessels of and certain imports from Libya suspended and discontinued; section 4.22 of the Customs Regulations, amended

TITLE 19—CUSTOMS DUTIES

CHAPTER I—U.S. CUSTOMS SERVICE

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This rule adds Libya to the list of nations whose vessels are exempted from the payment of higher tonnage duties than are applicable to vessels of the United States and from the payment of light money. Satisfactory evidence has been obtained by the Department of State that no discriminating duties of tonnage or impost are imposed in Libyan ports upon vessels belonging to citizens of the United States or on their cargo.

EFFECTIVE DATE: The exemption became effective for Libya on September 1, 1969.

FOR FURTHER INFORMATION CONTACT: Patrick J. Casey, Carriers Drawback and Bonds Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229; 202-566-5706.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Generally, the United States imposes regular and special tonnage taxes, and a duty of a specified amount per ton, known as "light money," on all foreignv essels which enter U.S. ports (46 U.S.C. 121, 128). However, vessels of a foreign nation may be exempted from the pay-

ment of special tonnage taxes and light money upon presentation of proof satisfactory to the President that no discriminatory duties of tonnage or imposts are imposed by that foreign nation on U.S. vessels or their cargo (46 U.S.C. 141). The President has delegated the authority to grant this exemption to the Secretary of the Treasury. Section 4.22 of the Customs Regulations (19 CFR 4.22) lists those nations whose vessels have been exempted from the payment of any higher tonnage duties than are applicable to vessels of the United States and from the payment of light money.

On October 6, 1977, the Department of State advised that satisfactory evidence has been obtained from the Government of Libya that no discriminating duties of tonnage or impost are imposed or levied in ports of that country upon vessels wholly belonging to citizens of the United States, or upon the produce, manufactures, or merchandise imported into that country in those vessels.

In its communication, the Department of State advised no discriminating duties of tonnage or impost were imposed or levied upon vessels wholly belonging to citizens of the United States, or upon the produce, manufactures, or merchandise, imported into Libyan ports from September 1, 1969. The date of September 1, 1969, is based upon statements by the Government of Libya, established on September 1, 1969, that it has never imposed discriminatory duties of tonnage or impost on U.S. vessels.

DECLARATION

Therefore, by virtue of the authority vested in the President by section 4228 of the Revised Statutes, as amended (46 U.S.C. 141), and delegated to the Secretary of the Treasury by Executive Order No. 10289, September 17, 1951, as amended by Executive Order No. 10882, July 18, 1960 (3 CFR, 1959–63 comp., ch. II), and pursuant to the authorization provided by Treasury Department Order No. 190, rev. 15 (43 F.R. 11884), I declare that the foreign discriminating duties of tonnage and impost within the United States are suspended and discontinued, in respect to vessels of Libya, and the produce, manufactures, or merchandise imported into the United States in such vessels from Libya, or from any other foreign country.

This suspension and discontinuance shall take effect from September 1, 1969, in respect to vessels of Libya, and shall continue for so long as the reciprocal exemptions of vessels wholly belonging to citizens of the United States and their cargoes shall be continued and no longer.

AMENDMENT TO THE REGULATIONS

In accordance with this declaration, section 4.22 of the Customs Regulations (19 CFR 4.22) is amended by adding "Libya" in the appropriate alphabetical sequence in the list of nations whose vessels

are exempted from the payment of any higher tonnage duties than are applicable to vessels of the United States and from the payment of light money.

(R.S. 251, as amended, 4219, as amended, 4225, as amended, 4228, as amended, sec. 3, 23 Stat. 119, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624, 46 U.S.C. 3, 121, 128, 141).)

Because this amendment merely implements a statutory requirement, notice and public procedure thereon are found to be unnecessary and good cause exists for dispensing with the delayed effective date provisions of 5 U.S.C. 553.

DRAFTING INFORMATION

The principal author of this document was Todd J. Schneider, Regulations and Legal Publications Division, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices of the Customs Service and the Department of State participated in developing the document, both on matters of substance and style.

Dated: November 7, 1978.

RICHARD J. DAVIS,
Assistant Secretary of the Treasury.

[Published in the Federal Register November 21, 1978 (43 FR 54234)]

(T.D. 78–452)

Cotton, Wool, and Manmade Fiber Textile Products—Restriction on Entry

Restriction on entry of cotton, wool, and manmade fiber textile products manufactured or produced in the Philippines

There is published below a directive of September 14, 1978, received by the Commissioner of Customs from the chairman, Committee for the Implementation of Textile Agreements, concerning visa and exempt certification stamps, for the Republic of the Philippines. This directive amends, but does not cancel that committee's directive of August 31, 1976 (T.D. 76–307).

This directive was published in the Federal Register on September 20, 1978 (43 F.R. 42290), by the committee.

(QUO–2–1)

November 16, 1978.

WILLIAM D. SLYNE
(For Ben L. Irvin, Acting
Director, Duty Assessment Disivion).

U.S. DEPARTMENT OF COMMERCE,
THE ASSISTANT SECRETARY FOR INDUSTRY AND TRADE,
Washington, D.C. 20230, September 14, 1978.

Committee for the Implementation of Textile Agreements

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C. 20230

DEAR MR. COMMISSIONER: This directive amends, but does not cancel, the directive of August 31, 1976, from the chairman, Committee for the Implementation of Textile Agreements, that directed you to prohibit entry into the United States for consumption, and withdrawal from warehouse for consumption, of cotton, wool, and manmade fiber textile products in certain specified categories, produced or manufactured in the Republic of the Philippines, for which the Government of the Republic of the Philippines had not issued a visa or exempt certification.

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977, pursuant to the Bilateral Cotton, Wool, and Manmade Fiber Textile Agreement of October 15, 1975, as amended and extended, between the Governments of the United States and the Republic of the Philippines; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by executive Order 11951 of January 6, 1977, the directive of August 31, 1976, is hereby amended, effective on September 20, 1978, to provide for the use of new visa and certification stamps by the Government of the Republic of the Philippines for merchandise exported on and after June 22, 1978. Merchandise exported before June 22, 1978, shall not be denied entry for consumption, or withdrawal from warehouse for consumption, provided all other requirements have been met. The new visa and certification stamps are the same as those used previously by the Government of the Republic of the Philippines except that the following has been added to each:

Office of the President
Garments and Textile Export Board

The action taken with respect to the Government of the Republic of the Philippines and with respect to imports of cotton, wool, and manmade fiber textile products from the Republic of the Philippines has been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United

States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553, This letter will be published in the Federal Register.

Sincerely,

ROBERT E. SHEPHERD,
Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary for Domestic Business Development.

(T.D. 78–453)

Wool Textile Products—Restriction on Entry

Restriction on entry of wool textile products manufactured or produced in the Republic of Korea

There is published below a directive of September 28, 1978, received by the Commissioner of Customs from the chairman, Committee for the Implementation of Textile Agreements, concerning restriction on entry of wool textile products in category 459 manufactured or produced in the Republic of Korea. This directive amends, but does not cancel that committee's directive of December 27, 1977 (T.D. 78–87).

This directive was published in the Federal Register on October 5, 1978 (43 F.R. 46061), by the committee.

(QUO–2–1)

November 16, 1978.

WILLIAM D. SLYNE
(For Ben L. Irvin, Acting
Director, Duty Assessment Division).

U.S. DEPARTMENT OF COMMERCE,
THE ASSISTANT SECRETARY FOR INDUSTRY AND TRADE,
Washington, D.C. 20230, September 28, 1978.

Committee for the Implementation of Textile Agreements

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C. 20229

DEAR MR. COMMISSIONER: This directive further amends, but does not cancel, the directive issued to you on December 27, 1977, by the

chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool, and manmade fiber textile products, produced or manufactured in the Republic of Korea.

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of December 23, 1977, as amended, between the Governments of the United States and the Republic of Korea; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to prohibit, effective on October 2, 1978, and for the 12-month period beginning on January 1, 1978, and extending through December 31, 1978, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in category 459 (only TSUSA Nos. 700.7510 through 700.7560), produced or manufactured in the Republic of Korea, in excess of 2,850,000 pounds.[1]

Wool textile products in category 459 (only TSUSA Nos. 700.7510 through 700.7560) which have been exported to the United States prior to January 1, 1978, shall not be subject to this directive.

Wool textile products in category 459 (only TSUSA Nos. 700.7510 through 700.7560) which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) prior to the effective date of this directive shall not be denied entry under this directive.

A detailed description of the categories in terms of TSUSA numbers was published in the Federal Register on January 4, 1978 (43 F.R. 884), as amended on January 25, 1978 (43 F.R. 3421), March 3, 1978 (43 F.R. 8828), June 22, 1978 (43 F.R. 26773), and September 5, 1978 (43 F.R. 39408).

In carrying out the above directions, entry into the United States for consumption shall be construed to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of the Republic of Korea and with respect to imports of wool textile products from the Republic of Korea have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such

[1] The level of restraint has not been adjusted to reflect any imports after Dec. 31, 1977.

actions, fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

ROBERT E. SHEPHERD,
Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary for Domestic Business Development.

(T.D. 78-454)

Cotton and Manmade Fiber Textile Products—Restriction on Entry

Restriction on entry of cotton and manmade fiber textile products manufactured or produced in the Republic of the Philippines

There is published below a directive of September 21, 1978, received by the Commissioner of Customs from the acting chairman, Committee for the Implementation of Textile Agreements, concerning restriction on entry of cotton and manmade fiber textile products in certain categories manufactured or produced in the Republic of the Philippines. This directive cancels that committee's directive of December 23, 1977 (T.D. 78-60).

This directive was published in the Federal Register on September 25, 1978 (43 F.R. 43344), by the committee.

(QUO-2-1)

November 16, 1978.

WILLIAM D. SLYNE
(For Ben L. Irvin, Acting
Director, Duty Assessment Division).

U.S. DEPARTMENT OF COMMERCE,
THE ASSISTANT SECRETARY FOR INDUSTRY AND TRADE,
Washington, D.C. 20230, September 21, 1978.

Committee for the Implementation of Textile Agreements

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C. 20229

DEAR MR. COMMISSIONER: This directive cancels and supersedes the directive of December 23, 1977, which directed you to prohibit

entry into the United States for consumption and withdrawal from warehouse for consumption of certain specified categories of cotton and manmade fiber textile products, produced or manufactured in the Republic of the Philippines and exported to the United States during the 12-month period beginning on January 1, 1978, and extending through December 31, 1978.

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of August 22 and 24, 1978, between the Governments of the United States and the Republic of the Philippines; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to prohibit, effective on September 25, 1978, and for the 12-month period beginning on January 1, 1978, and extending through December 31, 1978, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and manmade fiber textile products, exported from the Republic of the Philippines in the following categories, in excess of the indicated 12-month levels of restraint:

Category	*12-month level of restraint* [1]	
331	551,467	dozen pairs
333/334	69,314	dozen of which not more than 27,000 dozen shall be in category 333
338/339	676,076	dozen
340	207,835	dozen
347	216,331	dozen
604	1,916,407	pounds
631	1,425,156	dozen pairs
633	15,639	dozen
634	167,652	dozen
636 [2]	37,939	dozen
638/639	765,350	dozen
641 [3]	153,967	dozen
643	39,975	dozen of which not more than 25,000 dozen shall be in TSUSA Nos. 380.-0464, 380.5176, 380-8451, and 380.8452

See footnotes at end of table.

Category	*12-month level of restraint* [1]	
645/646 [4]	84, 104	dozen
649	3, 400, 404	dozen
650	16, 849	dozen
651	85, 932	dozen

[1] The levels of restraint have not been adjusted to reflect any imports after Dec. 31, 1977.
[2] Excluding TSUSA Nos. 382.0414, 382.0467, 382.7818, and 382.8121.
[3] Excluding TSUSA Nos. 382.0460 and 382.8103.
[4] Excluding TSUSA Nos. 382.0427 and 382.7870.

In carrying out this directive entries of cotton and manmade fiber textile products in the foregoing categories, produced or manufactured in the Philippines and exported to the United States prior to January 1, 1978, and entered on and after the effective date of this directive, shall not be charged against the levels of restraint established in this directive.

Cotton and manmade fiber textile products in the foregoing categories that have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) before the effective date of this directive shall not be denied entry under this directive.

A detailed description of the categories in terms of TSUSA numbers was published in the Federal Register on January 4, 1978 (43 F.R. 884), as amended on January 25, 1978 (43 F.R. 3421), March 3, 1978 (43 F.R. 8828), June 22, 1978 (43 F.R. 26773), and September 5, 1978 (43 F.R. 39408).

In carrying out the above directions, entry into the United States for consumption shall be construed to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of the Republic of the Philippines and with respect to imports of cotton and manmade fiber textile products from the Philippines have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

EDWARD GOTTFRIED,
Acting Chairman, Committee for the Implementation of Textile Agreements.

(T.D. 78–455)

Cotton, Wool, and Manmade Fiber Textile Products—Restriction on Entry

Restriction on entry of cotton, wool, and manmade fiber textile products manufactured or produced in the Republic of China

There are published below directives of August 30, 1978, September 21, 1978, and October 11, 1978, received by the Commissioner of Customs from the chairman, Committee for the Implementation of Textile Agreements, concerning restriction on entry of cotton, wool, and manmade fiber textile products in certain categories manufactured or produced in the Republic of China. These directives amend but do not cancel, that committee's directive June 15, 1978 (T.D. 78–248).

These directives were published in the Federal Register by the committee on September 7, 1978 (43 F.R. 39849), September 27, 1978 (43 F.R. 43759), and October 16, 1978 (43 F.R. 47603), respectively.

(QUO–2–1)

November 16, 1978.

WILLIAM D. SLYNE
(For Ben L. Irvin, Acting
Director, Duty Assessment Division).

U.S. DEPARTMENT OF COMMERCE,
THE ASSISTANT SECRETARY FOR INDUSTRY AND TRADE,
Washington, D.C., August 30, 1978.

Committee for the Implementation of Textile Agreements

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C.

DEAR MR. COMMISSIONER: On June 15, 1978, the chairman, Committee for the Implementation of Textile Agreements, directed you to prohibit entry of cotton, wool, and manmade fiber textile products in certain specified categories, produced or manufactured in the Republic of China, and exported to the United States during the agreement year which began on January 1, 1978, in excess of designated levels of restraint. The chairman further advised you that the levels of restraint are subject to adjustment.[1]

[1] The term "adjustment" refers to those provisions of the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of June 8, 1978, between the Governments of the United States and the Republic of China which provide, in part, that: (1) Within the aggregate and group limits, specific ceilings may be exceeded by designated percentages; (2) these same levels may be increased for carryforward up to 7.15 pct of the applicable category limit; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of June 8, 1978, between the Governments of the United States and the Republic of China; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to amend, effective on August 30, 1978, the levels of restraint established in the directive of June 15, 1978, for cotton, wool, and manmade fiber textile products in categories 313, 333/334/335, 338/339, 340, 341, 347/348, 434, 440, 445/446, 633/634/635, 638, 640, 641, 643/644, 645/646, 647, and 648 to the following levels:

Category	*Amended 12-month level of restraint*[1]	
313	42, 696, 954	square yards
333/334/335	95, 815	dozen of which not more than 50,180 dozen shall be in category 333/334 and not more than 60,008 dozen shall be in category 335
338/339	467, 117	dozen
340	619, 038	dozen
341	358, 590	dozen
347/348	792, 754	dozen of which not more than 389,347 dozen shall be in category 347 and not more than 601,596 dozen shall be in category 348
434	373, 334	numbers
440	13, 570	dozen
445/446	127, 424	dozen
633/634/635	1, 363, 466	dozen of which not more than 899,229 dozen shall be in category 633/634 and not more than 668,758 dozen shall be in category 635
638	1, 446, 860	dozen
640	3, 094, 543	dozen
641	625, 947	dozen
643/644	1, 639, 238	numbers of which not more than 866,746 numbers shall be in category 643 and not more than 936,416 numbers shall be in category 644

See footnote at end of table.

Category	*Amended 12-month level of restraint* [2]
645/646	4,027,573 dozen
647	1,813,874 dozen
648	3,055,502 dozen

[2] The levels of restraint have not been adjusted to reflect any imports after Dec. 31, 1977.

The actions taken with respect to the Government of the Republic of China and with respect to imports of cotton, wool, and manmade fiber textile products from the Republic of China have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the implementation of such actions, falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

ROBERT E. SHEPHERD,
Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary for Domestic Business Development.

U.S. DEPARTMENT OF COMMERCE,
THE ASSISTANT SECRETARY FOR INDUSTRY AND TRADE,
Washington, D.C. 20230, September 21, 1978.

Committee for the Implementation of Textile Agreements

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C. 20229

DEAR MR. COMMISSIONER: On June 15, 1978, the chairman, Committee for the Implementation of Textile Agreements, directed you to prohibit entry for consumption, or withdrawal from warehouse for consumption, of cotton, wool, and manmade fiber textile products in certain specific categories, produced or manufactured in the Republic of China and exported to the United States during the agreement year which began on January 1, 1978, in excess of designated levels of restraint. The chairman further advised you that the levels of restraint are subject to adjustment.[1]

[1] The term "adjustment" refers to those provisions of the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of June 8, 1978, between the Governments of the United States and the Republic of China which provide, in part, that: (1) Within the aggregate and group limits, specific ceilings may be exceeded by designated percentages; (2) these same levels may be increased for carryforward up to 7.15 pct of the applicable category limit; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of June 8, 1978, between the Government of the United States and the Republic of China; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to amend, effective on September 21, 1978, the levels of restraint established in the directive of June 15, 1978, for categories 638 and 645/646 to the following levels:

Category	*Amended 12-month level of restraint* [1]
638	1, 543, 543 dozen
645/646	4, 315, 544 Dozen

[1] The levels of restraint have not been adjusted to reflect any imports after Dec. 31, 1977.

The action taken with respect to the Government of the Republic of China and with respect to imports of manmade fiber textile products from the Republic of China has been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such action, fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

EDWARD GOTTFRIED,
Acting Chairman, Committee for the Implementation of Textile Agreements.

U.S. DEPARTMENT OF COMMERCE,
THE ASSISTANT SECRETARY FOR INDUSTRY AND TRADE,
Washington, D.C. 20230, October 11, 1978.

Committee for the Implementation of Textile Agreements

COMMISSIONER OF CUSTOMS;
Department of the Treasury,
Washington, D.C. 20229

DEAR MR. COMMISSIONER: On June 15, 1978, the chairman, Committee for the Implementation of Textile Agreements, directed you to prohibit entry for consumption or withdrawal from warehouse for

consumption, of cotton, wool, and manmade fiber textile products in certain specific categories, produced or manufactured in the Republic of China and exported to the United States during the agreement year which began on January 1, 1978, in excess of designated levels of restraint. The chairman further advised you that the levels of restraint are subject to adjustment.[1]

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of June 8, 1978, between the Governments of the United States and the Republic of China; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed further to amend, effective on October 11, 1978, the levels of restraint previously established for manmade fiber textile products in categories 638 and 639 during the 12-month period which began on January 1, 1978, to the following:

Category	*Amended 12-Month Level of Restraint* [2]
638	1, 678, 764 dozen
639	4, 870, 914 dozen

[2] The levels of restraint have not been adjusted to reflect any imports after Dec. 31, 1977.

The action taken with respect to the Government of the Republic of China and with respect to imports of manmade fiber textile products from the Republic of China has been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

ROBERT E. SHEPHERD,

Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secertary for Domestic Business Development.

[1] The term "adjustment" refers to those provisions of the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of June 8, 1978, between the Governments of the United States and the Republic of China which provide, in part, that: (1) Within the aggregate and group limits, specific ceilings may be exceeded by designated percentages; (2) these same levels may be increased for carryforward up to 7.15 pct of the applicable category limit; and (3) administrative arrangements or adjustments may be made to resolve minio problems arising in the implementation of the agreement.

(T.D. 78-456)

Cotton Textile Products—Restriction on Entry

Restriction on entry of cotton textile products manufactured or produced in Poland

There is published below a directive of October 16, 1978, received by the Commissioner of Customs from the chairman, Committee for the Implementation of Textile Agreements, concerning restriction on entry of cotton textile products in category 338 pt. maunfactured or produced in Poland. This directive amends, but does not cancel that committee's directive of March 17, 1978 (T.D. 78-114).

This directive was published in the Federal Register on October 17, 1978 (43 F.R. 47768), by the committee.

(QUO-2-1)

November 16, 1978.

WILLIAM D. SLYNE
(For Ben L. Irvin, Acting
Director, Duty Assessment Division).

U.S. DEPARTMENT OF COMMERCE,
THE ASSISTANT SECRETARY FOR INDUSTRY AND TRADE,
Washington, D.C. 20230, October 16, 1978.

Committee for the Implementation of Textile Agreements

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C. 20229

DEAR MR. COMMISSIONER: On March 17, 1978, the chairman, Committee for the Implementation of Textile Agreements, directed you to prohibit entry during the 12-month period beginning on January 1, 1978, and extending through December 31, 1978, of cotton, wool, and manmade fiber textile products in certain specified categories, produced or manufactured in Poland, in excess of designated levels of restraint. The chairman further advised you that the levels of restraint are subject to adjustment.[1]

[1] The term "adjustment" refers to those provisions of the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of Jan. 9 and 12, 1978, between the Governments of the United States and the Polish People's Republic which provides, in part, that: (1) Within the aggregate and applicable group limits of the agreement, specific levels of restraint may be exceeded by designated percentages; (2) these levels may also be increased for carryover and carryforward; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of January 9 and 12, 1978, between the Governments of the United States and the Polish People's Republic; and in accordance with the provisions of Executive Order 11651 of January 6, 1977, you are directed, effective on October 18, 1978, to increase the 12-month level of restraint for category 338 pt. (only TSUSA Nos. 380.0651 and 380.0652) to 204,028 dozen.[2]

The actions taken with respect to the Government of the Polish People's Republic and with respect to imports of cotton textile products from Poland have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

ROBERT E. SHEPHERD,
Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary for Domestic Business Development.

(T.D. 78-457)

Wool and Manmade Fiber Textile Products—Change in Reporting Unit

Change in reporting unit for certain categories of wool and manmade fiber textile products.

There is published below a directive of August 10, 1978, received by the Commissioner of Customs from the acting chairman, Committee for the Implementation of Textile Agreements, concerning the change in the unit of measure for certain categories of wool and manmade fiber textile products.

This directive was published in the Federal Register on August 16, 1978 (43 F.R. 36297), by the committee.

(QUO-2-1)

November 16, 1978.

WILLIAM D. SLYNE
(For Ben L. Irvin, Acting
Director, Duty Assessment Division).

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[2] The level of restraint has not been adjusted to reflect any imports after Dec. 31, 1977.

U.S. DEPARTMENT OF COMMERCE,
THE ASSISTANT SECRETARY FOR INDUSTRY AND TRADE,
Washington, D.C. 20230, August 10, 1978.

Committee for the Implementation of Textile Agreements

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C. 20229

DEAR MR. COMMISSIONER: To align the reporting units of measure for imports in categories 433, 434, 435, 436, 442, 443, 444, 447, 448, 643, and 644, between the Tariff Schedules of the United States Annotated (TSUSA) and the correlation of textile and apparel categories with the TSUSA, you are directed, effective on September 5, 1978, to change the reporting units for the foregoing categories from numbers to dozens for all countries. In the future, levels for these categories will be given in dozens.

In using dozens as the reporting unit, the conversion factors for converting to square yards are the following:

Category:		Category:	
433	36.0	443	54.0
434	54.0	444	54.0
435	54.0	447	18.0
436	49.2	448	18.0
442	18.0	643	54.0

Export visas for merchandise in the above categories shall be accepted whether the unit of measure shown on the visa is numbers or dozens.

This letter will be published in the Federal Register.

Sincerely,

ARTHUR GAREL,
Acting Chairman, Committee for the Implementation of Textile Agreements.

(T.D. 78-458)

Cotton, Wool and Manmade Fiber Textile Products—Restriction on Entry

Restriction on entry of cotton, wool, and manmade fiber textile products manufactured or produced in India

There are published below directives of September 21 and 25, 1978, from the acting chairman, Committee for the Implementation of

Textile Agreements, concerning charges and deductions to quota levels for certain categories of cotton, wool, and manmade fiber textile products, manufactured or produced in India. The September 25 directive cancels that committee's directive of July 18, 1978 (T.D. 78–261).

These directives were published in the Federal Register on September 26 (43 F.R. 43539) and October 3, 1978 (43 F.R. 45629), respectively, by the committee.

(QUO–2–1)

November 16, 1978.

WILLIAM D. SLYNE
(For Ben L. Irvin, Acting
Director, Duty Assessment Division).

U.S. DEPARTMENT OF COMMERCE,
THE ASSISTANT SECRETARY FOR INDUSTRY AND TRADE,
Washington, D.C. 20230, September 21, 1978.

Committee for the Implementation of Textile Agreements

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C. 20229

DEAR MR. COMMISSIONER: To facilitate implementation of the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of December 30, 1977, as amended, between the Governments of the United States and India, you are requested, effective on September 27, 1978, to reduce the charges to group 11 (categories 330–369, 431–469, and 630–669) for goods exported after December 31, 1977, during the current agreement period by 10.5 million square yards equivalent. A charge of 650,000 dozen should be made to the level of restraint established for the same period for mill-made apparel made from handloomed fabric, visaed with the elephant. This change is to affect only the group II charges. Individual category charges within the group will not be affected.

This letter will be published in the Federal Register.

Sincerely,

EDWARD GOTTFRIED,
Acting Chairman, Committee for the
Implementation of Textile Agreements.

U.S. DEPARTMENT OF COMMERCE,

THE ASSISTANT SECRETARY FOR INDUSTRY AND TRADE,
Washington, D.C. 20230, September 25, 1978.
Committee for the Implementation of Textile Agreements

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C. 20229

DEAR MR. COMMISSIONER: The purpose of this letter is to clarify that the directive of September 21, 1978, concerning the reduction of 10.5 million square yards equivalent in charges from the group II ceiling (categories 330–369, 431–469, and 630–669), established under the terms of the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement, between the Governments of the United States and India, cancels and supersedes the directive of July 18, 1978, which lifted the embargo on the goup II limit for merchandise exported from India after December 31, 1977, and on or before July 7, 1978.

For purposes of implementing the directive of September 21, 1978, the following changes in TSUSA numbers should also be noted:

TSUSA No. 360.0500 changed to 360.0505
360.1000 changed to 360.1005
360.1500 changed to 360.1505
361.4200 changed to 361.4205
361.4400 changed to 361.4405

TSUSA Nos. 361.5422 and 361.5425 were both changed to 361.5418.
The letter will be published in the Federal Register.
Sincerely,

ARTHUR GAREL,
Acting Chairman, Committee for the Implementation of Textile Agreements.

T.D. 78–459 through T.D. 78–466

Customs Service Decisions

The following are decisions made by the U.S. Customs Service where the issues involved are of sufficient interest or importance to warrant publication in the CUSTOMS BULLETIN.

Dated: November 13, 1978.

DONALD W. LEWIS,
Assistant Commissioner,
Regulations and Rulings.

(T.D. 78-459)

Drawback: Products Shipped to the Northern Mariana Islands

Date: April 5, 1978
File: DRA-1-R:CD:D
208664 RS

To: Regional Commissioner of Customs, San Francisco, Calif. 94105.

From: Director, Carriers, Drawback and Bonds Division.

Subject: Drawback on products shipped to the Northern Mariana Islands.

You asked whether shipment of products to the Northern Mariana Islands fulfills the exportation requirement for drawback under the provisions of 19 U.S.C. 1313 (a) or (b).

The Northern Mariana Islands, including Saipan, Rota, and Tinian, have been administered by the United States since 1947 as part of the Trust Territory of the Pacific Islands. On January 9, 1978, the islands inaugurated a new constitutional government and entered the final stages of transition from trust territory to commonwealth status.

The Commonwealth of the Northern Mariana Islands was proclaimed by President Carter on October 24, 1977 (Proclamation No. 4534), following approval by Congress and the President of the "Covenant To Establish a Commonwealth of the Northern Islands in Political Union with the United States."

Section 603 of the covenant, which became effective January 9, 1978, provides that the government of the islands can levy duties on goods imported into its territory from outside the customs territory of the United States, and that imports into the customs territory of the United States from the customs territory of the Northern Marianas will be subject to the same treatment as imports from Guam into the customs territory of the United States.

Section 7653(c) of the Internal Revenue Code (26 U.S.C. 7653(c)) and section 557(a) of the Tariff Act of 1930 (19 U.S.C. 1557(a)) permit drawback of duties or taxes upon shipment of articles to Guam in specific circumstances. Footnote 3 of part 22 of the Regulations states that there is otherwise no authority for drawback of duty on articles shipped to Guam. Guam is not considered foreign territory for drawback purposes.

In view of the legal similarity between Guam and the Northern Mariana Islands for tariff purposes, the Northern Marianas cannot be considered foreign territory for drawback. Unlike Guam, however, the absence of statutory authority means that the Northern Mariana

Islands cannot be considered foreign territory for the purpose of exportation of flavoring extracts and medicinal or toilet preparations (including perfumery), under section 22.22 of the Customs Regulations, or for the purpose of exportation from continuous customs custody, under section 22.27 of the regulations.

(T.D. 78–460)

Carrier Control: Use of Foreign-Built Launch Barge to Transport Equipment Outside U.S. Territorial Waters

Date: May 5, 1978
File: VES–3–15–R:D:C
103415 FOB

(TELEGRAM)

Retel, April 26, 1978, concerning the use of foreign-built launch barge. As previously stated decision December 23, 1977, if the foreign-built launch barge transports the jacket and related equipment from any point to a point outside U.S. territorial waters where there is no existing fixed structure within the meaning of Outer Continental Shelf Lands Act (46 U.S.C. 1333) and launches jacket to floating position where jacket then is moved by another vessel to final location outside U.S. territorial waters where there is no existing fixed structure, no violative coastwise transportation would have been performed.

The same holds true if launch barge then proceeds to San Francisco Bay, picks up another jacket, proceeds to point outside U.S. territorial waters and launches second jacket (for an operation independent of the first jacket), which is then towed by another vessel to area adjacent to first jacket, outside U.S. territorial waters and where there is no fixed structure other than first jacket.

(T.D. 78–461)

Carrier Control: Coastwise Transportation of Container Chassis

Date: May 12, 1978
File: VES–3–17–R:CD:C
103388 CH

Re Transportation of chassis coastwise by Italian vessels (CR 4.93).

DEAR ——: Your letter of April 10, 1978, asks us to inform Customs officials at all U.S. gulf ports that Italian line vessels will not be in

violation of law in transporting bare (container) chassis between U.S. ports. For the reasons which follow we cannot do this.

When you called some weeks ago after being advised by Customs at Mobile that Italian line vessels could not legally transport bare (container) chassis between U.S. ports, Mr. Hart of this office understood from both you and the Customs marine officer at Mobile that the only issue involved was whether such bare chassis fell within the terms of the sixth proviso of title 46, United States Code, section 883. It was the Mobile marine officer's view that the bare chassis did not fall within the terms "equipment for use with cargo vans, lift vans, or shipping tanks" (clause (b) of the proviso) and, because they were not "instruments of international traffic" within the meaning of clause (d), did not come within the proviso at all. However, the Treasury report on the bill which became Public Law 90–474 and, among other things, added clauses (b) through (d) to the proviso, said in part:

> The Department interprets the words "equipment" in line 4, page 2, of the bill to mean equipment designed for use with cargo vans, lift vans, or shipping tanks, including but not limited to running gear (for example, single axle and tandem bogies, adaptor frames, and chassis), and understands the intent of the bill to be that such equipment may be transported coastwise by a nonentitled vessel without regard to whether it is affixed to or accompanies the vans or tanks.

After discussion of the legislative history it was agreed that the bare chassis did fall within the terms of clause (b).

Entirely overlooked in that discussion was the fact that, while Italy has been found to extend reciprocal privileges with respect to empty cargo vans, empty lift vans, and empty shipping tanks, it has not been found to extend similar reciprocal privileges with respect to the articles mentioned in clauses (b) through (d) of the proviso. Accordingly, until Italy has been found to extend such reciprocal privileges with respect to the articles mentioned in clauses (b) through (d) of the sixth proviso, their transportation between coastwise points on Italian vessels will continue to be prohibited under section 883.

To qualify vessels for these reciprocal privileges under the proviso there is required:

> a finding by the Secretary of the Treasury, pursuant to information obtained and furnished by the Secretary of State, that the government of the nation of registry extends reciprocal privileges to vessels of the United States * * *.

On the receipt of such assurances as outlined in the enclosed sample diplomatic note, consideration would be given to extending reciprocal privileges to vessels of Italian registry.

(T.D. 78–462)

Vessel Repairs: Repairs and Equipment Purchases Made in the Canal Zone; Fish Netting

Date: June 2, 1978
File: VES–13–R:CD:C
103395 JL

This is in reply to your letter of April 6, 1978, in which you request an interpretation of the last two sentences of our August 11, 1977, ruling to you.

You will recall that your position was that repairs and equipment purchases in the Canal Zone should be subject to declaration, entry, and payment of duty pursuant to 19 U.S.C. 1466. We held that inasmuch as the Customs Service has consistently taken the position since 1930 that the Canal Zone was not a foreign country for purposes of the vessel repair statute, and you had not made a clear showing that the Customs Regulations and administrative precedents were in error, your request for a change in our position on this question was denied. The last three sentences of the ruling are reproduced below:

> Absent a clear showing that the Customs Regulations and administrative precedents are in error, we rule that foreign repairs to U.S. vessels, or equipment purchases by those vessels, in the Canal Zone or the Virgin Islands are not dutiable under 19 U.S.C. 1466. It should be noted, however, that this ruling will not be decisive as to equipment which is merely delivered in these places. We will consider the dutiability of any commercial transaction brought to our attention where there is evidence that the Virgin Islands or Canal Zone delivery was not the result of a bona fide sale in those places.

The point of view expressed in your letter of April 6, is that if there is no manufacturing of netting within the Canal Zone, then the merchandise picked up by American fishing vessels is "merely delivered" within the meaning of our August 11 letter.

We must disagree with your position that only a manufacturing operation would qualify, for a reading of footnote 26 to section 4.14(a), Customs Regulations, clearly does not support that proposition. Further, we find nothing in the statute that sustains so narrow an interpretation.

It should be kept in mind that the last two sentences of our August 11 ruling should be read together and not separately as they are inexorably linked. Our position is that any item of vessel equipment that is sold and delivered in the Canal Zone under a bona fide contract

of sale will not be subject to entry and payment of duty under 19 U.S.C. 1466 upon the vessel's first arrival in the United States. It appears to us that each of the transactions you describe involves a bona fide contract of sale.

(T.D. 78–463)

Customs Bonded Warehouse: Aircraft Entered for Modification

Date: June 13, 1978
File: CON–9–04–R:CD:D
208872 ED

Re Entry of aircraft from England for modification; your letter of March 17, 1978.

DEAR SIR: This is in response to your above-referenced letter concerning the shipment into the United States of an aircraft from England. You indicate that one of your customers is purchasing a new English-made aircraft and that it will be routed to the United States for equipment installation and modification. While in this country the plane will not be used for any type of revenue-producing activity. Following completion of the modifications, the plane will be delivered to a party in the U.S. Virgin Islands. While the aircraft shall retain U.S. registry for financing purposes, it will be used as a commuter aircraft between St. Thomas, St. Croix, and other islands, with possible stops in San Juan, P.R. No flights will be made between San Juan and the continental United States.

All merchandise imported into the United States is subject to duty unless specifically exempt therefrom. As to the temporary free of duty under bond for subsequent exportation provisions of law, none of those provisions would apply to the operation you propose because a shipment to the U.S. Virgin Islands is not considered an exportation for purposes of canceling the bond.

However, we wish to direct your attention to title 19, United States Code, section 1562, pursuant to which imported merchandise may be cleaned, sorted, repacked, or otherwise changed in condition, but not manufactured in Customs-bonded warehouse. In this connection, the last sentence of section 1562 provides in part, that manipulation can take place other than in a bonded warehouse "in cases where neither the protection of the revenue nor the proper conduct of customs business requires that such manipulation be done in a bonded warehouse." The necessary arrangements in this regard should be made in

advance of entry with Customs officers at the intended port of entry.

Furthermore, when merchandise is manipulated under section 1562, it becomes subject to duty in its condition at the time of withdrawal, but the merchandise is not subject to duty if the withdrawal is made for exportation. Also, merchandise may be withdrawn from bonded warehouse under sections 1557 and 1562, title 19, United States Code, for shipment to the U.S. Virgin Islands without the payment of duty. On entering the Virgin Islands, aircraft, which are to be used in local traffic, are not subject to the 6-percent Virgin Islands import tax. This exemption is under item 21 of section 2 of Danish Law No. 64 (free list).

(T.D. 78-464)

Entry: Date of Entry; Refusal To Accept Uncertified Check

Date: June 14, 1978
File: ENT-1-03 R:E:E
305913 W

REGIONAL COMMISSIONER OF CUSTOMS,
Los Angeles, Calif. 90053

DEAR SIR: This is in reference to your letter of April 24, 1978, requesting headquarters' advice concerning a situation where Customs officers in Nogales on February 28, 1978, accepted entry papers and 12 company checks presented on that date by a customhouse broker for payment of duties on numerous shipments, and where Customs dated the entries as of that date, and after contacting the broker's bank on March 1, 1978, discovered that at that moment there were insufficient funds in the broker's account there to cover the checks. The Nogales district office then advised that broker that the checks were unacceptable, and when the broker was unable to produce a cashier's check that same day (Mar. 1) for the full amount due, the district reclassified several of these entries, which covered items of produce, at higher rates of duty which became effective on March 1, 1978. On March 3, 1978, the broker presented a cashier's check but for the amount of duties in effect on February 28, 1978.

The broker claims that the entries with a suitable check had been accepted on February 28 and that the effective date of the entry was, therefore, that day. The district director's position is that entry was not consummated at that time because the bank did not possess sufficient funds in the broker's account to cover the check. You state that according to usual business practices and because Customs was unable to definitely establish the broker's inability to make good on

his February 28 check, that February 28 should be considered the date of entry. For the reasons below, we are in agreement with you.

Section 141.69 of the Customs Regulations states that the applicable rates of duty for merchandise shall be, in this particular case, when the entry is completed in accordance with section 141.68 of the regulations. As applied to this case, in which we are informed that consumption entries were filed, section 141.68(e) considers the effective time of entry as when the appropriate entry form is properly executed and deposited, together with any other documents required to be filed at the time of entry, with the Customs officer designated to receive such entry papers, and when any duties required to be paid at the time of making entry have been deposited with the Customs officer designated to receive the same. In addition, section 24.1(a)(3) of the regulations allows payment of duties by an uncertified check, if acceptable by a Federal Reserve bank or other designated depository, if a bond to secure the payment of duties, taxes, etc. is on file with the district director, which we assume was the case here since a licensed customhouse broker was involved.

Headquarters believes that this is merely a situation where the district director attempted to disqualify the entries as of a certain date and reclassify the entries at higher rates of duty because the day after the checks were accepted by Customs, he called the bank and was told over the telephone that there were insufficient funds present at that moment to cover the checks, when, in fact, no check was ever actually presented to the bank for payment which was returned for insufficient funds. In light of these circumstances, especially considering the likelihood that there was a bond on file, it is our opinion that the date of entry was February 28, 1978, when the papers and checks were accepted by Customs.

(T.D. 78-465)

Drawback: Substitution; Same Kind and Quality of Electrical Steel

Date: June 19, 1978
File: DRA-1-09-R:CD:D
208884 B

Ref. Same kind and quality—electrical steel—General Electric specifications B50P81 and B507170—substitution 19 U.S.C. 1313(b).

Your letter of March 20, 1978, concerns the question of same kind and quality regarding substitution of certain electrical steels in the

manufacture of transformers. On December 13, 1977, we informed the Regional Commissioner, Boston, that the two steels were not same kind and quality because of the difference in magnetic quality of core loss, commonly known as the "M" factor. Your latest letter provided additional information on the subject.

Core loss is a crucial specification for a finding of same kind and quality. Electrical steels have subspecification AISI numbers and grades of M–6 to M–0. The lower the M number, the less the core loss and the higher the efficiency of the transformers produced. With no change in the manufacturing process, the use of, for example, M–2 steel will result in a more efficient transformer than one produced from M–6 steel.

In your letter of March 20, you state that your corporation can compensate for the difference in the M factor by additional turns of the copper coil which is wound around the transformer core. Generally, the same kind and quality requirement is met if the imported designated merchandise and the merchandise used to manufacture the exported product are interchangeable, with little or no change in the manufacturing process. In the instant case, based on the information in your letter and presented in a conference at Customs headquarters, it is clear that the change in the manufacturing process is substantial. Therefore steels with different M factors are not steels of the same kind and quality for purposes of 19 U.S.C. 1313(b) under the rate currently held by your corporation.

At a conference here with a member of my staff, a representative of your corporation and your broker indicated the M factor is irrelevant in most manufacturing processes. That is, most orders for transformers are accompanied by specifications which require use on only higher M factor (more core loss) electrical steel. In these instances steel with a lower M factor (less core loss) can be used, but specifications would be exceeded.

Substitution of the two types of steel cannot be made regardless of the same kind and quality aspect inasmuch as your rate calls only for substitution of one type having a particular specification set by your corporation.

You should submit a drawback statement, in triplicate, including in the parallel columns all steels used, with the additional statement that only those steels with the same M factor will be substituted and designated for claims for drawback. Or, your statement can be limited to claims for drawback based only on the exportation of transformers which are produced without regard to the M factor of the steel used.

If you choose the latter option, language similar to the standard "price extra" agreement, that drawback will be determined and limited by the value of the M steel exported, should be included in the statement.

(T.D. 78-466)

Classification: Silicon Ingots, Wafers, and Devices; T.D. 78-376 Modified

Date: June 23, 1978
File: CLA-2:R:CV:MA
054930 LXL

To: Area Director, New York Seaport, N.Y.

From: Director, Classification and Value Division, Headquarters.

Subject: Reconsideration of internal advice No. 111/77, supplement No. 1, ruling of February 27, 1978, on the classification of polished wafers and slices of silicon.

In our ruling of February 27, 1978, we classified silicon polished wafers and slices under the provision for other articles of base metal, in item 658.00, Tariff Schedules of the United States (TSUS), with duty at a rate of 9 percent ad valorem. This classification was based on the claim that the wafers have no special electrical characteristics and that wafers or silices were in material form.

Customs officers have requested reconsideration of our ruling as they still of the opinion that the polished monocrystalline silicone wafer has had imparted to it electrical properties by adding dopants in controlled amounts to impart highly precise degrees of resistivity, which result in a product dedicated to use as a transistor or other related electronic crystal components. We find that the evidence submitted supports this position.

Furthermore, the Customs officers concerned cite general interpretative rule 10(h), which states, "unless the context requires otherwise, a tariff description for an article covers such article, whether assembled or not assembled, and whether finished or not finished."

The attorney for an importer cites "The Merck Index" (monograph 8233) on silicon and the judicial notice of electrical resistance as an important electrical feature of silicon for its use as a semiconductor material which the Customs Court noted in the case of *Wacker Chemical Corporation* v. *United States*, C.D. 4695 (1977). The court states

beginning on page 23, "To be useful as a semiconductor material, silicon must neither be too pure nor contain excessive amounts of impurities. Thus, * * * carefully measured amounts of impurities referred to as "dopants" (phosphorus or other materials) are added to the silicon for the purpose of imparting the desired "resistivity property" * * * or "the electrical characteristics * * * that are desired by the ultimate customer or user of the single crystal silicon * * *."

Also submitted were copies of commercial specifications placed with the orders for polished silicon wafers which reveal great specificity as to the finish, crystallography, physical characteristics, and electrical characteristics required, including crystal orientation, dopant, whether "M" or "P" type, growth method, dislocations, grain boundaries, and resistivity. Lack of proper resistivity precision appeared to be sufficient cause for rejection of the wafers. The resistivity required varied with many different products and was expressed to a high degree of precision.

We held in our previous ruling on this matter that the wafers had no electrical characteristics until there had been an additional layer of deposition of a semiconductor material on the wafer to form a PN or NPN junction. We are now informed that this technique is used only for bipolar semiconductors which comprise approximately 30 percent of the solid state devices made; approximately 70 percent of the solid state devices do not require this type of epitaxial buildup and wafers are used as is.

Examination of commercial practice confirms that the polished wafers and slices are made with great precision, and are ordered, purchased, and sold on basis of specific electrical characteristics and crystal orientation for a specific semiconductor use.

The Court of Customs and Patent Appeals in *United States* v. *F. B. Vandegrift & Co., Inc.* (No. 4874), C.A.D. 628 (1956), stated the principle, "Where an article has been designed and manufactured with a single purpose in mind and is made to specifications which peculiarly adapt it to that purpose, it is properly considered to be dedicated to that purpose notwithstanding that it may happen to be used in other situations where no use is made of its special features."

Based on the foregoing principle and information, the polished wafers and slices discussed as "item 4" in our ruling of February 27, 1978, are classifiable under the provision for other related electronic crystal components, and parts thereof, in item 687.60, TSUS, and dutiable at the rate of 6 percent ad valorem. The ruling of February 27, 1978, is modified accordingly.

(TD 78-467)

Foreign Currencies—Daily Rates for Countries not on Quarterly List

Rates of exchange based on rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York for the Hong Kong dollar, Iran rial, People's Republic of China yuan, Philippines peos, Singapore dollar, Thailand baht (tical)

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to part 159, subpart C, Customs Regulations (19 CFR 159, subpart C).

People's Republic of China yuan:

November 6, 1978	$0.608162
November 7, 1978	Holiday
November 8, 1978	.608162
November 9, 1978	.608088
November 10, 1978	.611808

Hong Kong dollar:

November 6, 1978	$0.2092
November 7, 1978	Holiday
November 8, 1978	.2097
November 9, 1978	.2093
November 10, 1978	.2092

Iran rial:

November 6, 1978	$0.0141½
November 7, 1978	Holiday
November 8, 1978	.0141½
November 9, 1978	.0141½
November 10, 1978	.0141½

Philippines peso:

November 6, 1978	$0.1359
November 7, 1978	Holiday
November 8, 1978	.1359
November 9, 1978	.1359
November 10, 1978	.1359

Singapore dollar:	
November 6, 1978	$0.4547
November 7, 1978	Holiday
November 8, 1978	.4604
November 9, 1978	.4619
November 10, 1978	.4597
Thailand baht (tical):	
November 6, 1978	$0.0500
November 7, 1978	Holiday
November 8, 1978	.0500
November 9, 1978	.0500
November 10, 1978	.0500

(LIQ-3-O:D:E)

Date: November 17, 1978.

BEN L. IRVIN,
Acting Director,
Duty Assessment Division.

278 513-78—— 5

Recent Unpublished Customs Service Decisions

The following listing of recent administrative decisions issued by the Office of Regulations and Rulings, U.S. Customs Service, and not otherwise published, is published for the information of Customs officers and the importing community. Although the decisions are not of sufficient general interest to warrant publication as Treasury decisions, the listing describes the issues involved and is intended to aid Customs officers and concerned members of the public in identifying matters of interest which recently have been considered by the Office of Regulations and Rulings.

A copy of any decision included in this listing, identified by its date and file number, may be obtained in a form appropriate for public distribution upon written request to the Office of Regulations and Rulings, attention: Legal reference area, room 2404, U.S. Customs Service, 1301 Constitution Avenue NW., Washington D.C. 20229. These copies will be made available at a cost to the requester of 10 cents per page. However, the Customs Service will waive this charge if the total number of pages copied is 10 or less.

Decisions previously listed in earlier issues of the CUSTOMS BULLETIN are now available in microfiche format through subscription. It is anticipated that additions to the microfiche will be made quarterly. The cost for the first set of microfiche is $2.55 (15 cents per sheet of fiche). Requests for this first set and for subscriptions should be directed to the legal reference area. Subscribers will automatically receive updates as issued and will be billed accordingly.

Date: November 20, 1978.

LEONARD LEHMAN,
Assistant Commissioner,
Regulations and Rulings.

Date of decision	File No.	Issue
10-20-78	103169	Unlading: landing at U.S. port of cargo mistakenly laded aboard foreign vessel at a different U.S. port
9-21-78	103664	Carrier control: waiver of coastwise restrictions in the interest of national defense
10-19-78	306485	Entry: amount of claim to be filed in bankruptcy proceeding against importer who went bankrupt before depositing duties

Date of decision	File No.	Issue
10–4–78	306530	Entry: definition of the term "importer of record"
10–18–78	541798	Value: use of gains or losses due to currency fluctuation, sale of assets, or foreign income tax to determine profit on articles entered under item 807.00, TSUS
10–26–78	707827	Country of origin marking: seals and shields of Japanese origin which, after importation, are affixed to bearings manufactured in Romania
10–10–78	708049	Prohibited and restricted importations: copyright—Spanish language text book
10–25–78	709310	Mail entries: letters from communist countries
10–26–78	709323	Prohibited and restricted importations: chain door lock alarm possibly subject to International Trade Commission exclusion order
10–31–78	709371	Country of origin marking: machined and unmachined ceiling fan castings and their containers
10–2–78	709386	Prohibited and restricted importations: trademarks—similarity of trademarks "Fromage de France" and "Isle de France"
10–6–78	709476	Prohibited and restricted importations: patent infringement—camping tents imported from Japan
10–23–78	709495	Prohibited and restricted importations: golf balls possibly subject to International Trade Commission exclusion order
10–13–78	709502	Marking and labeling: marking of gold jewelry to indicate its gold content
10–18–78	709515	Country of origin marking: bases used as a component of fireset racks or stands of U.S. manufacture
10–26–78	709532	Country of origin marking: steel valve protection caps for acetylene gas and oxygen cylinders used in the welding trade
10–24–78	709533	Prohibited and restricted importations: used postage stamps
10–27–78	709546	Prohibited and restricted importations: single blade pocket knives which may be opened by inertia
7–5–78	051633	Classification: thermal wear of cotton
9–1–78	052878	Classification: women's cotton denim jeans with strip of fabric attached to top of pocket
10–8–78	055306	Value: applicability of American selling price to open-toe, open-back slip-on sandal
10–18–78	055307	Value: applicability of American selling price to satin quilt slipper
10–20–78	055319	Classification: wooden toy banks
10–20–78	055616	Generalized System of Preferences: whether hardwood veneer or woodtape manufactured in Singapore from imported logs is considered "local content" for GSP purposes
10–10–78	055620	Generalized System of Preferences: whether cutting, sewing, and pressing of leather to form leather articles constitutes substantial transformation

Date of decision	File No.	Issue
9-3-78	056654	Classification: wooden Santa Claus figures for decorating Christmas trees
10-20-78	056981	Classification: ornamented shoe uppers
10-20-78	057035	Classification: electrical device used to electrolyze various minerals dissolved in water and to separate alkalized ionized water and acidic water
10-18-78	057125	Classification: slipper tree, an apparatus for weaving mukluks and similar footwear
10-4-78	057222	Classification: aircraft engines originally manufactured in the U.S. reentered for salvage purposes
10-12-78	057273	Classification: cast iron insert used in the housing of a gear shaft on a military vehicle
10-20-78	057317	Classification: coils for an electric motor of under 1/40 horsepower
10-10-78	057318	Classification: oil bottle that attaches to machinery to lubricate it; 6-inch scraper block which acts as a pulley
10-20-78	057337	Classification: rubber adult-size head masks
10-13-78	057360	Classification: steel railroad car axles
10-20-78	057368	Classification: safety/relief valves used on main steam lines of reactor pressure vessels
10-20-78	057373	Classification: plastic-coated gloves
10-20-78	057391	Classification: ½ bushel harvesting hamper
10-24-78	057400	Classification: polypropylene fabric placemats and ornamented rayon fabric placemats
10-20-78	057402	Classification: cube puzzle, object of which is to line up smaller cubes of the same color on each side of larger cube
10-24-78	057430	Classification: ski gloves
10-20-78	058541	Classification: pressure sensitive regulator which regulates the flow of propane gas
9-28-78	058567	Duty assessment: Faberge Jasper Box
10-2-78	059256	Classification: various grades of paper: tea bag stock, cigarette plug wrapper stock, and cork tipping paper
7-24-78	059516	Classification: garlic paste (crushed garlic)
8-16-78	059619	Classification: dead insects, *apis mellifera adansonii*
9-26-78	059723	Classification: knit terry shorts

Decisions of the United States Court of Customs and Patent Appeals

(C.A.D. 1216)

THE UNITED STATES v. CORNING GLASS WORKS, No. 78-5 (—F. 2d—)

1. Classification of Imports—Ampul Inspection Machines—TSUS

Customs Court decision sustaining protest to classification of ampul inspection machines as "Other" optical measuring or checking instruments under item 710.90 TSUS, reversed and remanded.

2. Id.—Common Meaning

Giving "check" its common meaning (i.e., to inspect), the phrase "checking instruments" in TSUS item 710.90 clearly and unambiguously encompasses the present machines and is not rendered ambiguous merely because additional dictionary meanings exist for "checking".

3. Id.

By limiting the meaning of "checking" in TSUS item 710.90 to the concept of measuring or verifying a measurement, the Customs Court improperly rendered that term superfluous.

4. Id.—Ejusdem Generis

Creation of an ambiguity in an otherwise clear and unambiguous statute, by reference to legislative history or the rule of *ejusdem generis*, is improper.

U.S. Court of Customs and Patent Appeals, November 16, 1978

Appeal from U.S. Customs Court, C.D. 4733

[Reversed and Remanded.]

Barbara Allen Babcock, Assistant Attorney General, *David M. Cohen*, Branch Director, *Joseph I. Liebman*, *John J. Mahon* for the United States.

Murray Sklaroff, attorney of record, for appellee.

[Oral argument on November 1, 1978 by John J. Mahon for appellant and by Murray Sklaroff for appellee]

Before MARKEY, *Chief Judge*, RICH, BALDWIN, LANE, and MILLER, *Associate Judges*.

MARKEY, Chief Judge.

[1] The government appeals from the judgment of the U.S. Customs Court, 79 Cust. Ct. 72, C.D. 4716, 448 F. Supp. 262 (1977) [1] sustaining Corning Glass Works' (Corning's) protest relating to imported ampul inspection machines. The Customs Court held that proper classification was under item 678.50, TSUS, as "machines not specially provided for * * *." We reverse and remand.

BACKGROUND

The imported goods are machines used to inspect drug-containing ampuls for foreign matter in the drug solution, and for defects in the ampuls.

A conveying rod moves filled and sealed ampuls from an input chute to an inspection stage, where they are held by vacuum cups and rapidly rotated. Rotation is stopped abruptly and, before the contents cease swirling, an operator views the ampuls through a magnifying lens. Swirling mobilizes foreign matter, making it more readily visible. The ampuls are illuminated and viewed against panels of varying translucence. The operator separates unacceptable ampuls with pushbutton activated air jets. Acceptable ampuls are collected in a discharge chute.

Customs classified the goods under TSUS item 710.90,[2] modified by Presidential Proclamation 3822 (32 F.R. 19002, T.D. 68–9) as "[o]ptical measuring or checking instruments * * *." Corning advanced

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[1] The Government's motion for rehearing was denied. *Corning Glass Works* v. *United States*, 80 Cust. Ct. ——, C.D. 4733 (1978).

[2] TSUS items 710.86–710.90 read;

SCHEDULE 7—SPECIFIED PRODUCTS; MISCELLANEOUS AND NONENUMERATED PRODUCTS.

* * * * * * *

PART 2—OPTICAL GOODS; SCIENTIFIC AND PROFESSIONAL INSTRUMENTS; WATCHES, CLOCKS, AND TIMING DEVICES; PHOTOGRAPHIC GOODS; MOTION PICTURES; RECORDINGS AND RECORDING MEDIA

* * * * * * *

Subpart C.—Surveying, Navigational, Meteorological, Drawing, and Mathematical Calculating Instruments; Measuring and Checking Instruments Not Specially Provided For.

* * * * * * *

Optical measuring or checking instruments and appliances not provided for elsewhere in subpart C, D, or F of this part, and parts thereof;

Item 710.86 Profile projectors and parts thereof * * *

Item 710.88 Comparator benches, measuring benches, and micrometric reading apparatus, all the foregoing and parts thereof * * *

Item 710. 90 Other ..... 25% ad val.

alternative claims for classification under item 678.50 TSUS,[3] as "[m]achines not specially provided for * * *," and several other TSUS items not relevant here.

The Customs Court held that legislative history and the rule of ejusdem generis limited TSUS item 710.90 to optical instruments that measure or verify the accuracy of a measurement Because the imported goods lacked those functions, the court held the Government's classification improper. Whether the imported goods were optical instruments was not determined. Corning's claim under item 678.50 TSUS was sustained.

ISSUE

The issue is whether the Customs Court erred in finding that the goods were erroneously classified under item 710.90.[4]

OPINION

The superior heading to TSUS items 710.86–710.90 provides for "[o]ptical measuring or checking instruments * * *." The parties having agreed that the goods at issue are not "measuring" instruments, the controversy centers on whether the goods are optical "checking" instruments.

[2] Absent contrary indications, we give tariff schedule language its common meaning. *John S. James a/c The Consolidated Packaging Corp.* v. *United States*, 48 CCPA 75, 79, C.A.D. 768 (1961). "Check" is defined as "to inspect and ascertain the condition of especially in order to determine that the condition is satisfactory; * * * investigate and insure accuracy, authenticity, reliability, safety, or satisfactory performance of * * *; to investigate and make sure about conditions or circumstances * * *." [5] Applying that definition, "checking instruments" clearly and unambiguously encompasses machines, like those imported here, that carry out steps in a process for inspecting ampuls to determine whether they conform to an imperfection-free standard. An ambiguity does not arise merely because addi-

[3] TSUS item 678.50 reads;

Schedule 6.—METALS AND METAL PRODUCTS

* * * * * *

Part 4—MACHINERY AND MECHANICAL EQUIPMENT

* * * * * *

Subpart H.—Other Machines

* * * * * *

Item 678.50	Machines not specially provided for, and parts thereof	5% ad val.

[4] In its motion for rehearing, the Government argued that the presumption of correctness remained attached to its finding that the imported goods were "optcal," even though the court had held the goods not to be "measuring or checking" instruments. The Government cited item 708.89, "[o]ptical appliances and instruments not provided for * * * [o]ther * * *," as an alternate classification more specific than item 678.50. The court rejected the alternative because the Government had failed to assert it as an affirmative defense. On appeal, the Government repeats the argument in maintaining that the court below erred in finding item 678.50 the proper classification. Absent a finding on whether the imported machine is an "optical" instrument, we do not reach the correctness of classification under item 678.50.

[5] "Webster's Third New International Dictionary," 381 (1971).

tional dictionary meanings exist for "checking." If that were the test, most statutes would be ambiguous.

[3] Although "checking" includes the concept of verifying a measurement, the common meaning of "checking" is not limited to that concept. "Checking," in the context of TSUS item 710.60–710.80, was found broad enough to include egg candling (i.e., viewing eggs against a light to detect staleness, blood clots, fertility, and growth) machines. *Bruce Duncan Co., Inc., a/c Staalkat of America, Inc.* v. *United States*, 67 Cust. Ct. 430, C.D. 4312 (1971).[6] Limiting "measuring or checking instruments" to devices that measure or verify the accuracy of a measurement, improperly renders "checking" superfluous, because verification of a measurement is itself a form of "measuring." When possible, we must give effect to every word in a statute. *United States* v. *Gulf Oil Corp.*, 47 CCPA 32, 35, C.A.D. 725 (1959).

[4] The Customs Court found support for its restrictive interpretation in the legislative history of TSUS item 710.90. However, creation of an ambiguity in an otherwise clear and unambiguous statute, by reference to legislative history, is improper. *American Customs Brokg. Co., Inc., a/c Hamakua Mill Co.* v. *United States*, 58 CCPA 45, 48, C.A.D. 1002, 433 F. 2d 1340, (1970); *Akawo, Morimura & Co.* v. *United States*, 6 Ct. Cust. Appls. 379, 381, T.D. 35921 (1915). The tariff provision at issue here is clear and unambiguous, and resort to legislative history is unnecessary and erroneous.

The superior heading, as construed above, defines the cumulative scope of inferior items 710.86–710.90 TSUS. The scope of the superior heading is not limited by language in the inferior items. The rule of ejusdem generis is inapplicable where, as here, the statute is clear and unambiguous. *Sandoz Chemical Works, Inc.* v. *United States*, 50 CCPA 31, 35, C.A.D. 815 (1963).

We hold that Corning's imported machines were "checking" instruments in the context of TSUS item 710.90, and, accordingly, that the Customs Court's contrary conclusion was in error.

The Customs Court expressly declined to decide whether the present machines are "optical" instruments within the meaning of TSUS item 710.90. The testimony respecting the function of the lens, and whether that function is subsidiary, as defined in headnote 3 to part 2, schedule 7,[7] is in conflict. Because that issue is crucial in

[6] A machine essentially the same as that here involved, was found to have been correctly classified under item 710.90 in *Amaco, Inc.* v. *United States*, 74 Cust. Ct. 172, C.D. 4602 (1975). The court below distinguished that case on the basis of plaintiff's concession in *Amaco* that that machine was a checking instrument, the sole issue in *Amaco* being whether the machine was an optical instrument.

[7] Headnote 3 reads:

3. The term "optical instruments," as used in this part, embraces only instruments which incorporate one or more optical elements, but does not include any instrument in which the incorporated optical element or elements are solely for reviewing a scale or for some other subsidiary purpose.

determining the correctness of the classification under TSUS item 710.90, and because the initial evaluation of conflicting testimony is the province of the Customs Court, we remand the case for consideration of that question.

(C.A.D. 1217)

NICHOLS & COMPANY, INC. v. THE UNITED STATES, No. 78-9—F. 2d—

1. Motion for summary judgment—Collateral Estoppel

Customs Court decision granting Government's motion for summary judgment based on the doctrine of collateral estoppel affirmed.

2. Id.—Reappraisement

Doctrine of collateral estoppel applicable in Customs reappraisement case.

3. Id.—Issue Actually Decided

Issue actually decided for purposes of collateral estoppel even though determination based on failure of proof.

4. Id.—Change in Controlling Facts

Different dates of exportation not change in controlling fact without proof that value changed from one date to another.

5. Id.—Intervening Change in Law

Liberalization of discovery rules not intervening change in law where new evidence obtained as result of more liberal discovery would not have changed outcome had it been available in original suit.

6. Id.—Distinguishable from Prior Case

Present case distinguishable from *Arnold Pickle & Olive Co.* v. *United States*, 79 Cust. Ct. 50, C.D. 4712, 435 F. Supp. 921 (1977) which held collateral estoppel inappropriate where erroneous appraisal remains in effect only because of failure to prove correct appraisal. In present case original decision never held appraisement erroneous.

U.S. Court of Customs and Patent Appeals, November 16, 1978

Appeal from U.S. Customs Court, C.D.

[Affirmed.]

William E. Melahn (Doherty and Melahn), attorneys of record, for appellant. *Barbara Allen Babcock*, Assistant Attorney General, *David M. Cohen*, Chief, Customs Section, *Joseph I. Liebman, Saul Davis* for the United States.

[Oral argument on October 5, 1978 by William E. Melahn for appellant and by Saul Davis for appellee]

Before MARKEY, *Chief Judge*, RICH, BALDWIN, and MILLER, *Associate Judges*, and FORD,* *Judge*.

FORD, Judge.

[1] This appeal is from the judgment of the U.S. Customs Court, 80 Cust. Ct. ——, C.D. 4734. 447 F. Supp. 455 (1978) granting the Government's motion for summary judgment based on the doctrine of collateral estoppel. We affirm.

The Customs Court held the importer was estopped from relitigating the valuation issue decided by a prior reappraisement case between the parties involving the same merchandise, appraised at the same value (which value remained constant during the period of time involved herein), exported by the same French manufacturer, imported by the same importer under the same contract. *Nichols & Co.* v. *United States*, 60 Cust. Ct. 917, R.D. 11555 (1968), *aff'd*, 64 Cust. Ct. 849, A.R.D. 271 (1970), *aff'd*, 59 CCPA 67, C.A.D. 1041, 454 F. 2d 1183 (1972), (hereinafter referred to as *Nichols I*).

This appeal involves cross motions for summary judgment. The merchandise consists of nylon staple fiber, substandard acrylic staple fiber, and first grade acrylic staple fiber and is identical to the merchandise under consideration in *Nichols I*.

The merchandise is described in the final list promulgated by the Secretary of the Treasury, T.D. 5421, and in both cases was appraised on the basis of foreign value under section 402a(c) of the Tariff Act of 1930 as modified by the Customs Simplification Act of 1956, 19 U.S.C. 1402(c). In *Nichols I*, the importer contended the proper basis of appraisal to be export value as contained in section 402a(d) of the Tariff Act of 1930, as amended by the Customs Simplification Act of 1956, as plaintiff does in the case at bar. The pertinent statutory provisions provide:

> *1402. Value (alternative)*
>
> *(a) Basis*
>
> For the purpose of this chapter, the value of imported articles designated by the Secretary of the Treasury as provided for in section 6(a) of the Customs Simplification Act of 1956 shall be—
>
> (1) *The foreign value or the export value, whichever is higher;*
>
> (2) If the appropriate Customs officer determines that neither the foreign value nor the export value can be satisfactorily ascertained, then the U.S. value;
>
> (3) If the appropriate Customs officer determines that neither the foreign value, the export value, nor the U.S. value can be satisfactorily ascertained, then the cost of production;

*The Honorable Morgan Ford, U.S. Customs Court, sitting by designation.

(4) In the case of an article with respect to which there is in effect under section 1336 of this title a rate of duty based upon the American selling price of a domestic article, then the American selling price of such article. [Italic added.]

* * * * * * *

(*c*) *Foreign value*

The foreign value of imported merchandise shall be the market value or the price at the time of exportation of such merchandise to the United States, at which *such or similar merchandise* is freely offered for sale for home consumption to all purchasers in the principal markets of the country from which exported, in the usual wholesale quantities and in the ordinary course of trade, including the cost of all containers and coverings of whatever nature, and all other costs, charges, and expenses incident to placing the merchandise in condition, packed ready for shipment to the United States. [Italic added.]

(*d*) *Export value*

The export value of imported merchandise shall be the market value or the price, at the time of exportation of such merchandise to the United States, at which such or similar merchandise is freely offered for sale to all purchasers in the principal markets of the country from which exported, in the usual wholesale quantities and in the ordinary course of trade, for exportation to the United States, plus, when not included in such price, the cost of all containers and coverings of whatever nature, and all other costs, charges, and expenses incident to placing the merchandise in condition, packed ready for shipment to the United States.

The merchandise was appraised on the basis of foreign value. Thereafter the importer instituted an action for reappraisement contending that since the merchandise was not freely offered for sale in France for home consumption, foreign value did not exist. Accordingly, the importer claimed the proper basis of appraisement should have been export value, which value the importer contended was the entered value. A test case (*Nichols I*) was instituted involving three exportations in May of 1962. Cases involving similar exportations (including all of the importations before us on appeal) were suspended pending final determination of *Nichols I*.

The trial Court in *Nichols I* held foreign value did not exist inasmuch as the merchandise was not freely offered for sale in the French home market. However, the Court denied reappraisement since the importer failed to establish the correct value.[1]

The appellate term of the Customs Court affirmed the lower court's decision based upon a different legal principle. The Court therein

[1] To rebut the presumption of correctness which attaches to an appraisement, an importer must prove not only that the appraisement is incorrect but also establish the correct appraisement. *Dana Perfumes Corp.* v. *United States*, 63 CCPA 43, 45, C.A.D. 1162, 524 F. 2d 750, 751-2 (1975).

held the importer did not negate foreign value since it failed to establish that no similar merchandise was sold in the French home market. Accordingly, the presumption of correctness attaching to the appraisement remained unrebutted. The Court, therefore, concluded it was unnecessary to reach the question of export value. The reasoning and decision of the appellate term was affirmed in C.A.D. 1041, *supra*, by this Court.

Subsequent to the decision in *Nichols I*, rules for discovery in the Customs Court were liberalized, affording the importer an opportunity to depose the Customs examiner and to review the Treasury Department documents upon which the appraisement was made. In *Nichols II* the importer attempted to offer additional evidence, uncovered as a result of discovery, which allegedly supports the importer's position that foreign value does not exist and that the proper basis for valuation is export value.

[2] The threshold question raised by this appeal is whether or not the doctrine of collateral estoppel is applicable in the instant case. In the past, this doctrine of estoppel has been applied in Customs reappraisement cases [2] but has not been applied in Customs classification cases.[3]

Achieving a final resolution of disputes is an essential goal of our legal system. Doctrines such as collateral estoppel and res judicata are important tools which enable the courts to realize this goal. These doctrines are set aside only for compelling reasons. One exception, however, is Customs classification litigation, where application of the doctrine of collateral estoppel would create a special problem.

Since collateral estoppel only binds parties and their privies, its application creates a potential for discrimination between those bound by a particular decision and those not bound. In classification cases this discrimination is particularly troublesome due to its duration. To paraphrase the Supreme Court in *Stone & Downer*, *supra*. collateral estoppel remains in effect for as long as the controlling facts remain the same. In classification cases this would be for as long as the classification statute and the merchandise remain unchanged.

In Customs reappraisement cases, however, the prospect of discrimination over an extended period of time is unlikely, because the controlling facts are subject to significant change from case to case. Some of the controlling facts which may cause the variance are the

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[2] *J. E. Bernard & Co.* v. *United States*, 66 Cust. Ct. 545, R.D. 11739, 324 F. Supp. 496 (1971); *H. M. Young Associates, Inc.* v. *United States*, 69 Cust. Ct. 155, C.D. 4388, 439 F. Supp. 1007 (1972), *aff'd*, 62 CCPA 20, C.A.D. 1138, 505 F. 2d 721 (1974).

[3] *United States* v. *Stone & Downer Co.*, 274 U.S. 225 (1927).

following statutory elements required to be found by the appraising officer in ascertaining foreign value:

(1) The market value or price at the time of exportation;
(2) The merchandise must be freely offered for sale in the home market to all purchasers;
(3) In the principal markets of the country of exportation;
(4) In the usual wholesale quantities;
(5) In the ordinary course of trade.

Collateral estoppel is applicable only in a Customs reappraisement case where the facts are so similar that the value of the merchandise remains the same. Since the reason for precluding collateral estoppel in classification cases does not apply to reappraisement cases, the Customs Court's distinction between them for purposes of applying collateral estoppel appears justified.

Since we agree with the Customs Court that collateral estoppel is applicable in Customs reappraisement litigation, we reach the question of whether or not it was properly applied. Collateral estoppel prevents relitigation of issues actually and necessarily decided in a prior action between the parties where the controlling facts and applicable legal rules remain unchanged. *Commissioner* v. *Sunnen*, 333 U.S. 591 (1948). Appellant argues collateral estoppel was improperly applied for the following reasons:

(1) *Nichols II* involves issues not actually decided in *Nichols I;*
(2) The controlling facts in the two cases are different;
(3) There has been an intervening change in the law.

[3] The ultimate decision in *Nichols I* was that Nichols had failed to rebut the presumption of correctness that attached to the appraised value since the importer had failed to establish the lack of foreign value, for similar merchandise. As the Customs Court correctly noted, an issue is actually litigated for purposes of collateral estoppel even though the determination is based on a failure of proof. (Restatement 2d of Judgments, § 68, comment (d) at 6–7 (tentative draft No. 4, 1977).) Thus, the issue of foreign value for similar merchandise was actually and necessarily litigated in *Nichols I.*

To rebut the presumption of correctness in *Nichols II*, appellant must establish that similar merchandise was not sold in the home market. In *Nichols I* the Court decided this point adversely to the importer. The fact that *Nichols II* also involves issues not decided by *Nichols I* cannot assist appellant. The burden of overcoming the presumption of correctness attaching to the appraised value rests upon the importer. In order for the importer to obtain a favorable decision he must relitigate the issue of foreign value of similar merchandise.

This was the one issue which was actually and necessarily determined against him in *Nichols I*.

[4] Appellant urges *Nichols I* involved importations in May 1962 only, whereas, *Nichols II* involves importations throughout 1962. However, this does not constitute a change in the controlling facts since there is no evidence the market value of the imported merchandise changed during 1962. The record actually supports the conclusion that the value of the imported merchandise remained constant throughout 1962. Every 1962 importation received the same presumptively correct appraisal. Furthermore, Treasury Department special agent's No. 3–147.1, dated November 26, 1963, establishes the French manufacturer's home market price for first-quality fiber remained the same from October 1961, until April 1963. The reports appear to be silent as to the substandard merchandise.

[5] Appellant contends the liberalization of discovery rules in Customs cases during the interim between *Nichols I* and *Nichols II* constituted an intervening change in the law precluding the application of collateral estoppel. This contention is not persuasive. Appellant has failed to bring to our attention any case in which an intervening change in procedural law (as opposed to substantive law) has precluded the application of collateral estoppel. Additionally, appellant has failed to convince us that the new evidence obtained as a result of the more liberal discovery rules would have changed the result had it been available to appellant in *Nichols I*.

The new evidence consists of Treasury Department special agents' reports upon which the appraisement in question was based. To have any bearing on this case, such new evidence must relate to the issue of foreign value for similar merchandise, since this is the only issue to which an estoppel has been applied. In this regard the special agents' reports are silent.

Appellant urges us to infer from this silence that no similar merchandise was sold in France. Appellant argues further that had the investigating officer found similar merchandise sold in France he would have reported it. Accordingly, his failure to report the existence of similar merchandise is proof that it did not exist. We find this reasoning unpersuasive. It is just as plausible to conclude that the report is silent in this regard because the investigator, as did Customs Examiner Sullivan, stopped searching for a foreign value for similar merchandise once he discovered the foreign value for "such" merchandise.

Our conviction that the discovery rules then in force had little to do with the outcome in *Nichols I* is reinforced by the fact that in the first trial appellant called as a witness an officer of the French manu-

facturer who was one of the sources of information for the special agents' reports. Appellant conceivably could have established through this witness whether or not similar merchandise was sold or offered for sale in France.

[6] Appellant's remaining argument is based on the recent Customs Court decision in *Arnold Pickle & Olive Co.* v. *United States*, 79 Cust. Ct. 50, C.D. 4712, 435 F. Supp. 921 (1977). In that case, the court concluded collateral estoppel was inappropriate where an erroneous appraisal remained in effect due to the failure to prove the correct appraisal. The Court reasoned such a result should not be the subject of an estoppel in a later case because it was not a precise determination of the issue of valuation.

Appellant asserts *Arnold Pickle* is precisely the same as the case at bar. However, this is not the case. The original decision in *Arnold Pickle* held the appraisement to be erroneous. In *Nichols I*, however, this court and the appellate term of the Customs Court did not hold the appraisement to be erroneous. The Courts held Nichols had failed to negate the possibility that the presumptively correct appraisement was based on the foreign value of similar merchandise.

Whether collateral estoppel is applicable in a case involving an erroneous appraisement is not before the court.

Accordingly, for the reasons set forth herein, the judgment of the Customs Court is *affirmed*.

Decisions of the United States Customs Court

Customs Decisions

(C.D. 4777)

HAWAIIAN INDEPENDENT REFINERY *v.* UNITED STATES

Petroleum products—Validity of assessment of customs duties on light and heavy gas oil consumed within a foreign trade zone

I. A foreign trade zone is "an isolated, enclosed, and policed area, operated as a public utility, in or adjacent to a port of entry, furnished with facilities for lading, unlading, handling, storing, manipulating, manufacturing, and exhibiting goods, and for reshipping them by land, water, or air." 15 CFR, 400.101.

II. Foreign and domestic merchandise may be brought into a trade zone and therein stored, sold, exhibited, broken up, repacked, assembled, distributed, sorted, graded, cleaned, mixed with foreign

or domestic merchandise or manufactured without being subject to the customs laws of the United States. 19 U.S.C. 81c.

III. Duties under the Tariff Schedules of the United States may be imposed only upon articles imported into the Customs territory of the United States from outside thereof. General headnote 1, Tariff Schedules of the United States.

IV. The customs territory of the United States does not include the area comprising a foreign trade zone. 19 CFR, 146.1(c).

V. Foreign crude oil imported into a foreign trade zone, partially processed and refined and therein consumed and used as a secondary and supplemental source of fuel in a refining process, is not subject to duty under the Tariff Schedules of the United States.

VI. Whether the use of fuel oil as a secondary and supplemental source of fuel in the refinery of a foreign trade zone constitutes or should constitute a permissible activity or use is a determination to be made by the Foreign Trade Zone Board subject only to judicial review as to reasonableness and consonance with the purpose and intent of the Foreign Trade Zone Act.

VII. A nonpermissible activity or use with respect to foreign merchandise within a foreign trade zone cannot be corrected or remedied by a duty unilaterally imposed thereon by the Customs Service.

Court No. 73–10–02750

Port of Honolulu

[Judgment for plaintiff.]

(Decided November 6, 1978)

Glad, Tuttle & White (*Jonathan K. Bellsey* and *George R. Tuttle* of counsel) for the plaintiff.

Barbara Allen Babcock, Assistant Attorney General (*Velta A. Melnbrencis* and *Susan C. Cassell*, trial attorneys), for the defendant.

Boe, Judge: This case presents a question of statutory interpretation and application with respect to the administration of the Foreign Trade Zones Act, as amended, 19 U.S.C. 81a et seq. A foreign trade zone is "an isolated, enclosed, and policed area, operated as a public utility, in or adjacent to a port of entry, furnished with facilities for lading, unlading, handling, storing, manipulating, manufacturing, and exhibiting goods, and for reshipping them by land, water, or air." 15 CFR 400.101 (1972). Pursuant to the provisions of section 3 of the Foreign Trade Zones Act, as amended, 19 U.S.C. 81c:

> Foreign and domestic merchandise of every description, except such as is prohibited by law, may, without being subject to the Customs laws of the United States, except as otherwise provided in this chapter, be brought into a zone and may be stored, sold, exhibited, broken up, repacked, assembled, distributed,

> sorted, graded, cleaned, mixed with foreign or domestic merchandise, or otherwise manipulated, or be manufactured except as otherwise provided in this chapter, and be exported, destroyed, or sent into Customs territory of the United States therefrom, in the original package or otherwise; but when foreign merchandise is so sent from a zone into Customs territory of the United States it shall be subject to the laws and regulations of the United States affecting imported merchandise: * * *.[1]

The privilege to which this proviso refers was not requested by the plaintiff in the instant action. Thus, the merchandise in question was listed in the subzone as nonprivileged merchandise, see 19 CFR Sec. 146.23 (1972), which under section 3 of the act could only be appraised and classified and its duties liquidated thereon when "sent into the Customs territory of the United States."

It must be emphasized at this juncture that the determination which the Court makes in the instant action is limited to the subject matter merchandise, that is—nonprivileged foreign merchandise.

For purposes of the entry of foreign merchandise and the payment of Customs duties thereon, a foreign trade zone is not considered to be a part of the Customs territory of the United States. 15 CFR 400.101 (1972); see also 19 CFR 146.1(c) (1972). The issue to be resolved in this case is whether foreign merchandise which is used as an integral part of a permissible manufacturing process within a zone, but which never enters the Customs territory of the United States, is subject to duty under the Tariff Schedules of the United States.

The merchandise, invoiced variously as "industrial fuel oil," "gas oil," "heavy gas oil," and "light gas oil," was processed from foreign crude oil imported into foreign trade subzone 9–A in Oahu, Hawaii, and manufactured at plaintiff's oil refinery located therein. The merchandise was then stored and used as needed as a source of fuel for the refinery's operations. The Customs Service required plaintiff to file consumption entries for the merchandise so used as fuel within the zone [2] and classified the fuel under either TSUS, item 475.05 as fuel

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[1] Immediately following the statutory language quoted in the text, section 3 of the act contains a proviso which reads in pertinent part:

> *Provided*, That whenever the privilege shall be requested and there has been no manipulation or manufacture effecting a change in tariff classification, the appropriate Customs officer shall take under supervision any lot or part of a lot of foreign merchandise in a zone, cause it to be appraised and taxes determined and duties liquidated thereon. Merchandise so taken under supervision may be stored, manipulated, or manufactured under the supervision and regulations prescribed by the Secretary of the Treasury, and whether mixed or manufactured with domestic merchandise or not may, under regulations prescribed by the Secretary of the Treasury, be exported or destroyed, or may be sent into Customs territory upon she payment of such liquidated duties and determined taxes thereon. If merchandise so taken under supervision has been manipulated or manufactured, such duties and taxes shall be payable on the quantity of such foreign merchandise used in the manipulation or manufacture of the entered article. * * *

[2] The specific merchandise involved in the present action was "entered" between September and November 1972.

oil testing under 25° API (0.125 cents per gallon) or item 475.10 as fuel oil testing 25° API or more (0.25 cents per gallon). The plaintiff protested this decision and claims the merchandise is nondutiable because it never entered customs territory. As an alternative claim, the plaintiff submits that, if dutiable, the merchandise should be classified under TSUS, item 475.15 as "natural gas, methane, ethane, propane, butane, and mixtures thereof," entitled to free entry.

I

In order to better understand the genesis of the present controversy, it will be helpful to set forth a brief account of the establishment of foreign trade subzone 9–A, as well as of the operations of plaintiff's refinery in the zone during which the merchandise in issue was both manufactured and subsequently used. Much, though not all, of this information was presented at the trial of this case through the testimony of plaintiff's sole witness Mr. Paul C. Joy,[3] and by plaintiff's introduction of four documentary exhibits.

A

In November 1968, the State of Hawaii, as the grantee of foreign trade zone 9 in Honolulu, applied to the Foreign Trade Zones Board [4] for the grant of a permit to establish a noncontiguous subzone in which an oil refinery would be constructed by the plaintiff. The proposed refinery was intended to process solely foreign crude oil into semifinished and finished petroleum products, primarily for export. An examiner's committee, appointed by the Board, see 15 CFR 400.1308–1309 (1972), held hearings on the applicaton in both Honolulu and Washington, D.C. in December 1968, and January 1969, and subsequently filed a report recommending that the application be approved. See 31st Annual Report of the Foreign Trade Zones Board at 4 and n.1 (1969). The application was formally approved by the Board in April 1970. See 35 F.R. 6672 (1970).

Once the grant was procured, construction of the refinery commenced. Actual refining operations began in April 1972. Shortly before the refinery became operational, however, the plaintiff was informed by Customs that the portion of the refinery's product which was to be used for fuel within the subzone was considered to be dutiable merchandise. Customs required plaintiff to install a special meter to measure the amount of this fuel and required the filing of periodic consumption entries therefor. See plaintiff's collective exhibit 3.

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[3] Mr. Joy is the vice president of the plaintiff who conceived the idea for a foreign trade zone refinery and handled all the technical requirements for its establishment.

[4] The Foreign Trade Zones Board is the administrative body charged by Congress with the ultimate responsibility for administering the Foreign Trade Zones Act. It is composed of the Secretary of Commerce, who serves as its Chairman, and the Secretaries of the Treasury and the Army. See 19 U.S.C. 81a(b).

B

The merchandise here in issue was manufactured and subsequently used as fuel in a process which began with the unloading of crude oil from a tanker by means of an offshore pipeline which carries the crude to one of several storage tanks inside subzone 9–A. In order to refine the crude oil, it is withdrawn from the storage tank by means of a pump which transports the crude to a crude oil heater. This heater, operated at temperatures of between 1500° F and 2000° F, raises the temperature of the crude to a range between 650° F and 700° F. Once this temperature range is achieved, the crude is pumped into a column known as the distillation or fractionating unit. Here the more volatile components of the crude—those with boiling points under 650° F—are vaporized and move up the column and are separated or "fractionated" and then condensed into their respective boiling point fractions. Once condensed, these components, such as refinery gas, naphtha, and kerosene, exit the distillation unit and may thereafter be further refined into finished commercial petroleum products. A fraction of the crude which vaporizes in the distillation unit is so volatile or unstable, however, that it will not condense as it moves up the column. Because it is not economically feasible to store this component in a gaseous form, it is routed back into the crude oil heater furnace, where it is flared and used as the primary source of fuel for the production of heat to run the refinery.[5]

In the distillation unit, the heavier and more stable components of the crude oil—those which will not vaporize at 650° F—move to the bottom of the column. A portion of this hot oil (a combination of light gas oil, heavy gas oil, and atmospheric residuum or industrial fuel oil) is withdrawn from the bottom of the column and is channeled to the refinery's feeder tank. As it enters the feeder tank, it is measured by the meter required by customs. This oil in the feeder tank, which is the merchandise involved in this proceedings, is used to provide a secondary source of fuel for the heat required in the refinery's operations. Whereas the volatile, noncondensable fuel gas produceed in the distillation unit is used almost immediately as the primary source of fuel, this heavy oil in the feeder tank is used as a supplemental source.

In order to use this oil to produce heat, however, further processing is required. As needed, the oil is withdrawn from the feeder tank by means of a pump which raises the pressure of the oil to 350–400 pounds per square inch. It is pumped into a steam preheater which reduces the viscosity of the oil (making it more liquefied) by raising

[5] The Customs Service has never attempted to impose duties upon this noncondensable fuel gas.

its temperature. The nonviscous oil is then pumped into an atomizing device and there is subjected to high pressure steam causing a turbulent reaction which produces a very fine fog of liquid droplets. This atomized fog of liquid oil and steam droplets exits the atomizer through an opening in the burner nozzle into the furnace of either the stem boiler or the crude oil heater wherein it is subjected to intense heat in the burner firebox.[6] As these liquid droplets absorb radiant heat, they decompose or crack and form more basic fuel elements such as methane, ethylene, propane, and propylene. The atomized fog of these more basic and now gaseous elements continues to be subjected to intense heat until it reaches its ignition temperature. At this point, air is introduced into the burner through a separate port and its combination with the now gaseous material and the high temperature causes combustion to occur resulting in the release of intense amounts of heat energy which is used in the refinery's steam boilers and crude oil heaters. The gaseous material further decomposes with this release of heat energy into carbon dioxide and water vapor and is released into the atmosphere.

II

The defendant's argument for the dutiability of the merchandise is predicated upon the fact that the statutory language does not specifically authorize foreign merchandise to be "consumed" as a part of the permissible manufacturing activities within a zone. Thus, contends the defendant, the general rule that all foreign merchandise imported into the United States is subject to duty unless specifically exempted, is controlling herein.

The Government's reliance upon the general rule of dutiability with respect to the issues in this case appears to be misplaced. The basis for the defendant's position is found in general headnote 1 to the Tariff Schedules of the United States, providing that:

> All articles *imported into the customs territory of the United States* from outside thereof are subject to duty or exempt therefrom as prescribed in general headnote 3.[7] [Italic added.]

It will be noted from the aforequoted headnote, however, that dutiability is expressly conditioned therein upon the importation of foreign articles "*into the Customs territory of the United States* * * *." From the statutes and regulations relating to trade zones, it appears that a patent distinction is drawn between the boundaries delineating the geographical territory of the United States and the Customs

[6] Mr. Joy testified that maximum atomization is important to give the mixture an optimum surface area with which to absorb the radiant heat in the firebox.

[7] General headnote 3 specifies the method for computing the particular rates of duty which apply to merchandise from different countries and insular possessions.

territory of the United States. Customs regulations pertaining to foreign trade zones make such a distinction by specifically exempting trade zones from the definition of "Customs territory":

> "Customs territory" is the territory of the United States in which the general tariff laws of the United States apply *but which is not included in any zone.* [19 C.F.R. 146.1(c) (1972).] [Italic added.]

Accordingly, since it is clearly established by all of the evidence as well as conceded by defendant's answer that the subject merchandise never physically entered the Customs territory of the United States, it, indeed, would follow that the merchandise is not subject to duty while remaining within the trade zone.

The defendant, however, attempts to avoid this conclusion by advancing the contention that the purpose for the establishment of a foreign trade zone, separate and distinct from "Customs territory," is at variance with the general rule of dutiability upon imported foreign merchandise, and that, accordingly, the legislative enactment creating a trade zone must be strictly construed. Such a construction, the defendant argues, dictates that nonprivileged foreign merchandise brought into a trade zone is nondutiable only if its use is in connection with an activity or operation specifically enumerated in section 3 of the act. Thus, continues the defendant, if it is determined by the Customs Service that a particular activity is not expressly enumerated by section 3, the provisions of the act are inapplicable and the merchandise automatically is deemed to be within the Customs territory of the United States and subject to duty.

Suffice it to say, the acceptance of such a fiction or rationalization for the purpose of justifying the collection of revenue by way of customs duties would do violence to the express language of the Foreign Trade Zones Act. Section 3 thereof is prefaced by the all inclusive statement:

> Foreign and domestic merchandise of every description, except such as is prohibited by law, may, without being subject to the Customs laws of the United States, *except as otherwise provided in this chapter*, be brought into a zone * * *. (19 U.S.C. 81c.[Italic added.]

The foregoing statutory language will permit no other interpretation but that merchandise is not subject to the customs laws while in a zone, unless the Foreign Trade Zones Act authorizes their application. [8]

[8] An example of a limited authorization for the application of the Customs laws to merchandise within a zone is the act's provision for privileged merchandise. Pursuant to this statutory authorization, the owner may request Customs to take his merchandise under supervision and to appraise and classify it and liquidate its customs duties thereon while the merchandise is still in the zone. Duties so liquidated are not collected, however, until the merchandise actually enters the Customs territory. See note 1, supra.

As stated in note 1, the merchandise here in issue is nonprivileged foreign merchandise.

Section 3 does not provide, as the Government would contend, that the Customs laws are fully applicable to merchandise within a zone except to the extent that the act specifically precludes their application. The aforequoted language clearly attests to the opposite: Exemption for merchandise in a zone from the Customs laws is the rule; dutiability for such merchandise under the Customs laws is an exception which must be specifically provided in some provision of the act. Unless specifically expressed by the act to the contrary the transferal of such merchandise to the Customs territory is the occurrence which makes such merchandise dutiable under the Customs laws:

> * * * [B]ut when foreign merchandise is so sent from a zone into customs territory of the United States it shall be subject to the laws and regulations of the United States affecting imported merchandise * * *. [19 U.S.C. 81c.]

Resort to the legislative history of the Foreign Trade Zones Act, and its amendments, confirms the conclusion that foreign merchandise in a zone is not subject to duty until it actually enters the Customs territory of the United States. The act as originally passed in 1934, see act of June 18, 1934, 48 Stat. 999 (1934) (Celler Act), provided for the establishment of the zones and the permissible activities for which the zones could be used. The manufacture and exhibition of merchandise within a zone were expressly prohibited. In 1950, the act was amended to repeal this prohibition, and thereafter manufacturing and exhibition were expressly permitted. See act of June 17, 1950, 64 Stat. 246 (1950) (Boggs amendment). The Senate report accompanying the Boggs amendment clearly recognized that the foreign trade zone was a geographical entity separate and distinct from the Customs territory.

> A foreign trade zone is an isolated, fenced off, and policed area within or adjacent to a port of entry where foreign merchandise may be landed, stored, repacked, sorted, mixed, or otherwise manipulated with a minimum of Customs control and without Customs bond. *If such merchandise s brought into Customs territory*, it is subject to all Customs laws and regulations. [S. Rep. 1107, 81st Cong., 1st Sess. (1949).] [Italic added.]

In hearings before the House Committee on Ways and Means, the distinct nature of the foreign trade zone was noted by the sponsors of identical bills which were later substantially enacted as the Boggs amendment. Thus, Representative Ellsworth Buck, the sponsor of H.R. 6159 (80th Cong., 2d Sess. (1948)) testified:

> Reduced to its simplest terms, a foreign trade zone is a properly protected * * * area which is outside the Customs boundaries of the United States. Thus, from a Customs angle, a foreign

> trade zone is not a part of the United States. [Hearings on H.R. 6159 and 6160, Committee on Ways and Means, 80th Cong., 2d Sess. at 5 (1948) (hereinafter Hearings).]

The comments of Representative Emanuel Celler, the sponsor of H.R. 6160, and the moving force behind the enactment of the original act in 1934, are particularly instructive:

> * * * [I]n the manufacture of the article, there may be a considerable quantity of foreign merchandise or articles involved. The importing manufacturer does not have to pay the duty, for example, on the importation of the foreign material. He does not have to pay the duty on the manufactured article containing the foreign material *until it is actually taken out of the foreign trade zone and placed into (Customs territory.* [Hearings, supra at 16.] [Italic added.]

In view of the fact that Congress, in enacting the Foreign Trade Zones Act and its amendments, has provided for distinct geographical zones separate from our Customs territory, the defendant's argument for the dutiability of the instant merchandise which remains within subzone 9–A is without persuasion. Merchandise which does not actually enter the Customs territory of the United States is not dutiable under the Tariff Schedules of the United States. See general headnote 1, supra.

In apparent recognition of the distinction made between foreign trade zones and the "customs territory" in the applicable statutes, the defendant advances the alternate theory that foreign merchandise which is "consumed" in a foreign trade zone may be considered to have been "constructively transferred" to the customs territory at the time of its use. As a basis for this contention, the defendant cites several provisions of the Customs Regulations which allow the constructive transfer of merchandise to customs territory without the present requirement for an actual physical transfer. See generally, 19 CFR 146.47(b)–(f), 146.48.[9] An examination of these regulations convinces this court that they provide no support for the defendant's position. First, the regulations provide that an application for constructive transfer must be filed with the District Director of Customs, thus making the process a voluntary one on the part of the person who wishes to transfer the merchandise. See id. Section 146.47(b). Second, and more important, after the application for the constructive transfer is approved, the merchandise must actually be transferred to customs territory within a specified time period, see id. Section

[9] Sec. 146.48 of the regulations deals with the importation of merchandise such as is involved herein from a foreign trade zone into the customs territory. See 19 CFR 146.48(a)(1) (1972). Subsec. (b) of this regulation, id. sec. 146.48(b), provides that the mechanics for the constructive transfer of the merchandise are governed by the provisions of section 146.47(b)–(f). See id. sec. 146. 47(b)–(f).

146.47(e)(2), or be restored to zone status. Id. 146.47(d). No authority is anywhere conferred upon customs to require the involuntary constructive transfer of merchandise which is never intended to, and which does not in fact, actually enter the customs territory of the United States.[10]

In holding the merchandise in question to be nondutiable, this court does not attempt to determine the propriety of defendant's major premise; that is—that the use of the oil in the feeder tank as a secondary source of fuel is not permissible under the act. Even were this court to assume that the use of this secondary source of fuel is not permissible, the fallacy in the defendant's position, however, lies in its postulate that the correction of such a nonpermissible use is effected by the imposition of a statutory duty. From the history of the act no indication appears that Congress intended this court to become the arbiter of permissible and/or nonpermissible intratrade zone activity.

Congress has charged the Foreign Trade Zones Board with the primary responsibility for administering the act. See 19 U.S.C. 81a(b). Pursuant to this obligation, the Board has promulgated regulations which must be complied with by an applicant seeking a zone permit. The regulations require the applicant to file an extensive and indepth series of exhibits setting forth his proposal for the establishment of a zone. See 15 CFR 400.603 (1972). These exhibits must spell out in detail the operations and use to which the zone or subzone will be

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[10] Forsooth, this has been the position of the customs service, itself. With respect to the consumption entries which it was required to file for the oil contained in the feeder tank, including those involved here, the plaintiff requested that it be allowed to constructively enter the merchandise as a gas since the oil was gassified prior to combustion. In a protest review decision involving different entries from those involved in this action, the Customs Service denied the plaintiff's request for constructive transfer by pertinently stating:

> With regard to the request for constructive transfer to customs territory, this type of transfer is not covered in the Foreign Trade Zones Act, but was devised by Customs as a means of avoiding a double transfer of merchandise; that is, Customs laws do not permit entries for merchandise to be accepted until the merchandise has actually arrived in customs territory. The Foreign Trade Zones Act spelled out no authority for merchandise to be entered while still physically in the zone except a limited authority for as much of the entry procedure as is necessary for liquidation in the case of privileged merchandise.
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> Literal compliance with the law required a physical transfer of the merchandise outside the zone area before it could be entered. After entry, the merchandise could be transferred from its temporary resting place outside the zone to its intended destination. The double handling of merchandise being transferred from a zone into the commerce of the country was so expensive and troublesome that it might have ruined zone business.
>
> The difficulty has been eliminated by the concept that if the importer and zone operator joined in a written request, and the district director approved, the merchandise would be considered as if it had been transferred to customs territory as of the time of the district director's approval, and all of the rights, liabilities, and procedural requirements which would have arisen in the case of an actual physical transfer would be considered as having arisen by constructive transfer as of the time of the district director's approval. The impractical double handling of the merchandise was thus eliminated.
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> *As will be seen from the foregoing, constructive transfer was to provide relief in those instances where merchandise was expressely intended to be physically moved into customs territory and not as to merchandise which could not be, and was never intended to be, physically moved,* as in the case here relating to the gaseous material which was not even created until after the gas oil had actually entered the furnace to be used as a fuel in the operation of the refinery. [See Plaintiff's collective exhibit 4; 9 Cust. Bull. 746, 749–50, P.R.D. 75–5 (1975).] [Italic added.]

devoted. Where activities are contemplated which are unauthorized under the act, the Board may either refuse to grant the permit, or may issue the permit upon specific conditions to prevent unauthorized activity. See id. section 400.700.

Following the receipt of a satisfactory application for subzone 9–A, the Board issued the permit authorizing a subzone for the specific purpose of establishing an oil refinery. The grant was in no way conditioned upon the use of duty-paid fuel to serve as the source of heat in the refining process. See 35 F.R. 6672 (1970). On the contrary, one of the advantages of the refinery in the subzone was that it would be self-contained, not requiring outside sources of fuel for its intended purpose of refining foreign crude.[11] It does not fall within the province of this court to determine in a proceeding of this character that the use of the instant merchandise, as an integral part of the intrazone refinery operation which was expressly permitted by the Board in issuing the zone permit, constituted an unauthorized activity under the act.

The court's determination of nondutiability in no way prevents the customs service from taking its case to the Board, if it continues to be of the opinion that the use of the fuel oil in the subzone's refining process is unauthorized. One of the Board's own regulations, codified at 15 CFR 400.807 (1972), contemplates such action by providing:

> When it shall be reported to the Board that any goods or *process of treatment* is detrimental to the public interest, health, or safety, the Board shall cause such investigation to be made as it may deem necessary. The Board may order the exclusion from the zone of any goods or *process of treatment* that in its judgment is detrimental to the public interest, health, or safety. [Italic added.]

The Board in turn may impose any conditions which it deems advisable upon the continued operation of the refinery in the subzone. *See id.* section 400.700. Such determinations by the Board are judicially reviewable at the request of the parties affected to determine their reasonableness and consonance with the purposes of the act. See *Armco Steel Corp.* v. *Stans*, 431 F. 2d 779 (2d Cir. 1970).[12]

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[11] Plaintiff's witness, Mr. Joy, testified that the refinery was conceived with the idea of using the heavy oil in the feeder tank as an internal fuel for its operations, and not natural gas as domestic American refineries on the mainland would use. The reason for this was twofold: First, Hawaii has no indigenous source of natural gas, necessitating shipments from the mainland which would have been prohibitively expensive. Second, and most important, the subzone refinery was planned as competition for foreign refineries which do not use duty-paid fuel for their operations. The goal of successfully competing with foreign refineries was apparently borne out once the subzone became operational. See "35th Annual Report of the Foreign Trade Zones Board" at 1 (1973) [hereinafter "35th Annual Report"].

[12] Should the Customs Service remain dissatisfied with the situation even after a determination by the Board, it may request congressional action to correct any perceived "hole in the tariff wall." See *Armco Steel Corp.* v. *Stans*, *supra* at 784–85.

This court may only observe that no necessary inconsistency exists between the grant of a permit for a subzone oil refinery using its own internally produced fuel and the purpose of the Foreign Trade Zones Act to encourage and stimulate the international commerce of the United States. See *Fountain* v. *New Orleans Public Service, Inc.*, 387 F. 2d 343 (5th Cir. 1967).

The history of the refinery's first full year in operation indicates that this purpose has been well served. See "35th Annual Report," supra at 1; see also id. at 41. The comments of the United States Court of Appeals in the *Armco* case are deemed appropriate:

> * * * The Act gives the Trade Zones Board wide discretion to determine what activity may be pursued by trade zone manufacturers subject only to the legislative standard that a zone serve this country's interests in foreign trade, both export and import. Because of the nature and complexity of the problem the factors entering into a Board determination are necessarily numerous, and it would seem incontrovertible that the Board must not be unduly hampered by judicial policy judgments that might cast doubt upon the wisdom of a particular Board decision. [*Armco Steel Corp.* v. *Stans*, *supra* at 785.]

This court, therefore, finds that the merchandise in question used as a secondary source of fuel in plaintiff's refinery located in foreign trade subzone 9–A, Oahu, Hawaii, is not subject to duty under the Tariff Schedules of the United States. The protest of the plaintiff is sustained.[13]

Let judgment be entered accordingly.

(C.D. 4778)

WOLF D. BARTH CO., INC. *v.* UNITED STATES

On defendant's motion to sever and dismiss

Court No. 75–12–03291

Port of Philadelphia

[Motion granted.]

(Dated November 9, 1978)

Shaw and Stedina (*Charles P. Deem* of counsel) for the plaintiff.

Barbara Allen Babcock, Assistant Attorney General (*Saul Davis*, trial attorney), for the defendant.

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[13] Because the court has determined that the merchandise in issue is nondutiable while it remains in the foreign trade subzone, it is unnecessary to address plaintiff's alternative claim that, if dutiable, the merchandise should be classified as a gas.

MEMORANDUM OPINION AND ORDER

WATSON, Judge: Defendant has filed this motion pursuant to rules 4.7(b) and 4.12 for an order severing and dismissing protest No. 1101–5–000472, covering entry No. 132131, from this action for lack of jurisdiction. It contends that the protest is untimely since it was not filed within 90 days of liquidation as required by 19 U.S.C. 1514 as amended.

The motion is predicated upon the following undisputed facts: The involved entry was liquidated on January 3, 1975, at the port of entry at Philadelphia, Pa. On March 4, 1975 (within the 90-day protest period), plaintiff's attorneys forwarded a written protest against that liquidation to the office of the New York regional commissioner where it was received and stamped the following day. On April 29, 1975, after the expiration of the 90-day protest period, the New York regional commissioner returned a copy of the protest to the plaintiff showing that it was denied on April 25, 1975, and noting that the protest was erroneously accepted at New York. Subsequently, the involved protest was received by the district director at the port of Philadelphia on April 30, 1975, 116 days after the date of liquidation.

Plaintiff, opposing the motion, contends that although the protest was inadvertently misdirected to the regional commissioner of New York by its attorneys, it was seasonably filed and that the New York office failed to take any action on the protest until the protest time limitation expired. It argues that the unreasonable delay in returning it, at this point, can only be presumed to have been deliberate or otherwise improper, and therefore this court should not decline jurisdiction before exploring the facts of the delay in an evidentiary hearing.

Defendant, in its response, states that plaintiff's argument that the mistake of its attorneys is mitigated by an alleged breach of duty by the Customs officers at the port of New York is essentially based upon the doctrine of estoppel. That doctrine, asserts the defendant, has no application to suits against the United States where jurisdiction of the court is in issue, except where there is positive proof of affirmative misconduct by Government officials. Defendant urges plaintiff's claim that there was a breach of duty on the part of Customs officials in New York is without any factual foundation and submits the affidavit of Harry L. Hammer, the then head of the protest and control section of the New York region, in support of this position.

In his affidavit, Mr. Hammer avers, *inter alia*, that due to the large volume of protests received during the month of March 1975, the request for retrieval of the instant entry was made approximately 5 weeks after the receipt of the protest (Mar. 5, 1975), by which time

the 90-day protest period had expired; that the filing error was noted on April 25, 1975, 22 days after the expiration of the statutory period; that plaintiff was notified of the error as soon as it was discovered. He further states that there is no evidence of any attempt to frustrate plaintiff's statutory right to file the involved protest.

19 U.S.C. 1514(b)(1)(2) requires in pertinent part that a protest be filed with the appropriate Customs officer designated in regulations prescribed by the Secretary of the Treasury within 90 days after liquidation. It is undisputed that according to section 174.12(d) of the Customs Regulations, the appropriate Customs officer for the filing of the protest in this case was the district director at Philadelphia, Pa. where the involved entry was made.

Not withstanding the foregoing statutory limitation, plaintiff maintains that the facts concerning the delay in returning the protest to it by the regional commissioner in New York should be explored in an evidentiary hearing and points to the court's recent decision in *Point Four Ltd., Inc.* v. *United States*, 78 Cust. Ct. 190, C.R.D. 77–4, 431 F. Supp. 1254 (1977), in Support of its position.

In that case, the plaintiff-importer, acting without counsel, contended that it was advised by Customs personnel at the port of entry (Toledo, Ohio) that it should file its protests at Chicago, Ill.; that it seasonably mailed the protests to Chicago as advised; and that the Chicago office did nothing with the protests until the protest time limit expired and then forwarded them to the district director at the headquarters port (Cleveland, Ohio) where they were received and untimely filed. Thus, the foregoing was alleged by plaintiff in its complaint as follows:

> 3. Protest was mailed, upon advice of the Toledo office, to U.S. Customs Service, Chicago, Ill., February 27, 1976. They forwarded it to Cleveland, Ohio, office where it was stamped March 15, 1976 and dated filed as March 16, 1976.

The defendant, having obtained an order of the court on consent for an extension of time to file its answer, elected in the interim to file a motion to dismiss on jurisdictional grounds.

In the course of its opinion in *Point Four*, the court said at page 192: "If full credence be given to the allegations in the third paragraph of the complaint in this case it is clear that the ends of justice as well as the objective of the statute of limitations will be ill served by a declination of jurisdiction on the part of the court. But at this point in the proceedings a judgment in the matter either way is premature, there being no evidentiary record before the court in connection with this motion."

The court held that inasmuch as defendant had procured a postponement in the joinder of issue under a commitment to answer the complaint, it was appropriate that it be required to do so. Accordingly, it denied defendant's motion to dismiss, without prejudice, however, to its raising the jurisdictional issue by way of its answer.

It appears that the facts involved in *Point Four* and those herein are clearly distinguishable. In the former, planintiff charged customs officials with affirmative deceptive conduct, while here there is no such contention. Moreover, the erroneous filing of the protest in the instant case was solely the result of an act done by plaintiff's attorneys and not any affirmative erroneous conduct on the part of customs officials, as claimed in the cited case. Significantly, in *Point Four*, plaintiff alleged the foregoing affirmative erroneous conduct in its complaint while in the instant controversy the complaint is devoid of any such allegation. Indeed, plaintiff's assertion of presumed deliberate or otherwise improper delay on the part of customs officials appears initially in its opposition to this motion.

It seems quite clear that in *Point Four* the court was concerned that "the rights of importers will not be forfeited as a consequence of deceptive or improper practices indulged in by customs officials." Accordingly, the court cited the case of *A. H. Burr* v. *United States*, 9 Cust. Ct. 13, 19–20, C.D. 651 (1942), where there was improper delay by customs officials in time-stamping the importer's entry papers until after the closing of a cattle quota; *Henry A. Wess, Inc.* v. *United States*, 25 Cust. Ct. 34, 37, C.D. 1259 (1950), where the merchandise was examined by the wrong customs official acting under color of authority; *Snake King* v. *United States*, 18 Cust. Ct. 33, 34–35, C.D. 1041 (1947), where the protest was accepted by the deputy collector after the closing hour on the 60th day after liquidation. It appears that none of the factors involved in any of the foregoing cases are present in the one before us. The instant situation involves an allegation, enshrouded with a considerable degree of vagueness, of "presumed" deliberate or otherwise improper delay on the part of customs officials in returning a protest filed in the wrong place by plaintiff's attorneys.

While there may be some room for questioning the delay in returning the erroneously filed protest, little credence may be ascribed to that argument in the light of: (1) The mistake on the part of plaintiff's counsel and its failure to discover and correct the same prior to the expiration of the protest filing period; (2) the aforestated explanation of the delay by Mr. Hammer; and (3) plaintiff's failure to include in

its complaint any allegations of deliberate or improper conduct on the part of customs officials.

A factual situation quite analogous to the one before us appears in the case of *United China & Glass Co.* v. *United States*, 53 Cust. Ct. 68, C.D. 2475 (1964). There, the involved merchandise was liquidated at the port of New Orleans. Plaintiff seasonably filed its protests with the collector at San Francisco. The involved protests were then forwarded by the San Francisco collector to the New Orleans collector and were received by him after the expiration of the protest time limitation period. The court in granting defendant's motion to dismiss the involved protests on the ground that they were untimely filed said: "The filing of protests, by whim or negligence, with some one or another of the many collectors in the United States, seems to us not to have been intended by Congress in enacting sections 514 and 515."

It appears that the reasoning of this court in the foregoing case is equally applicable to the situation before us.

Accordingly, it is

ORDERED that defendant's motion to sever the involved protest and to dismiss the action insofar as it relates to that protest be granted.

IT IS FURTHER ORDERED that defendant be given 30 days in which to reply to the complaint with regard to the remainder of the action.

International Trade Commission Notice

Investigations by the U.S. International Trade Commission

DEPARTMENT OF THE Treasury,

The appended notices relating to investigations by the U.S. International Trade Commission are published for the information of Customs officers and others concerned.

R. E. CHASEN.
Commissioner of Customs.

[AA1921–Inq.–23]

Titanium Dioxide From Belgium, France, the United Kingdom and the Federal Republic of Germany

Notice of Inquiry and Hearing

The U.S. International Trade Commission (Commission) received advice from the Department of the Treasury (Treasury) on October 30, 1978, that during the course of determining, in accordance with section 201(c) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(c)), whether to institute an investigation with respect to titanium dioxide from Belgium, France, the United Kingdom, and the Federal Republic of Germany, Treasury had concluded from the information available to it that there is substantial doubt that an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of this merchandise into the United States. Therefore, the Commission on November 6, 1978, instituted inquiry No. AA1921–Inq.–23, under section 201(c)(2) of the act, to determine whether there is no reasonable indication that an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States.

Treasury advised the Commission as follows—

DEAR MR. CHAIRMAN: In accordance with section 201(c) of the Antidumping Act of 1921, as amended, an antidumping

investigation is being initiated with respect to titanium dioxide from Belgium, France, the United Kingdom, and the Federal Republic of Germany. Pursuant to section 201(c)(2) of the act, you are hereby advised that the information developed during our preliminary investigation has led me to the conclusion that there is a substantial doubt that an industry in the United States is being, or is likely to be, injured by reason of the importation of this merchandise into the United States.

The bases for my determination are summarized in the attached copy of the antidumping proceeding notice in this case. Additional information will be provided by the U.S. Customs Service.

Some of the information involved in this case is regarded by Treasury to be of a confidential nature. It is therefore requested that the Commission consider all the information provided for its investigation to be for the official use of the ITC only and not to be disclosed to others without prior clearance from the Treasury Department.

Sincerely,

ROBERT H. MUNDHEIM.

Hearing.—A public hearing in connection with the inquiry will be held at 11 a.m. on Wednesday, November 15, 1978, in the hearing room, U.S. International Trade Commission, 701 E. Street NW., Washington, D.C. All parties will be given an opportunity to be present, to produce evidence, and to be heard at such hearing. Requests to appear at the public hearing should be received in writing in the office of the Secretary to the Commission not later than noon, Tuesday, November 7, 1978.

Written statements.—Interested parties may submit statements in writing in lieu of, or in addition to, appearance at the public hearing. A signed original and 19 true copies of such statements should be submitted. To be assured of their being given due consideration by the Commission, such statements should be received no later than Wednesday, November 13, 1978.

By order of the Commission.

Issued: November 7, 1978.

KENNETH R. MASON,
Secretary.

Investigation No. 337–TA–43

Certain Centrifugal Trash Pumps

Notice of Commission Hearing on Presiding Officer's Recommendation, Relief, Bonding and the Public Interest

Recommendation of "no violation" issued.—In connection with the Commission's investigation, under section 337 of the Tariff Act of

1930, of alleged unfair methods of competition and unfair acts in the importation and sale of certain centrifugal trash pumps in the United States, the presiding officer recommended on October 25, 1978, that the Commission determined that there is no violation of section 337. The presiding officer certified the hearing record to the Commission for its consideration. Copies of the presiding officer's recommendation may be obtained by interested persons by contacting the office of the Secretary to the Commission, 701 E Street NW., Washington, D.C. 20436; telephone 202–523–0161.

Commission hearing scheduled.—The Commission will hold a hearing beginning at 10 a.m., e.s.t., Wednesday, December 13, 1978, in the Commission's hearing room (room 331), 701 E Street NW., Washington, D.C. 20436, for two purposes. First, the Commission will hear oral argument on the presiding officer's recommendation that there is no violation of section 337 of the Tariff Act of 1930. Second, the Commission will receive oral presentations concerning appropriate relief, bonding, and the public interest in the event that the Commission determines that there is a violation of section 337. These matters are being heard on the same day in order to facilitate the completion of this investigation within time limits under law and to minimize the burden of this hearing upon the parties to the investigation. The procedure for each portion of the hearing follows.

Oral argument on presiding officer's recommendation.—A party to the Commission's investigation or an interested agency wishing to present to the Commission an oral argument concerning the presiding officer's recommendation will be limited to no more than 30 minutes. A party or interested agency may reserve 10 minutes of its time for rebuttal. The oral agruments will be held in this order: Complainant, respondents, interested agencies, and Commission investigative staff. Any rebuttals will be held in this order: respondents, complainants, interested agencies, and Commisison investigative staff.

Oral presentations on relief, bonding, and the public interest.—Following the oral arguments on the presiding officer's recommendation, a party to the investigation, an interested agency, a public interest group, or any interested member of the public may make an oral presentation on relief, bonding, and the public interest.

1. *Relief.*—In the event that the Commission were to find a violation of section 337, it would issue (1) an order which could result in the exclusion from entry of certain centrifugal trash pumps into the United States or (2) an order which could result in requiring respondents to cease and desist from alleged unfair methods of competition or unfair acts in the importation and sale of these trash pumps. Accordingly, the Commission is interested in what relief should be ordered, if any.

2. *Bonding.*—In the event that the Commission were to find a violation of section 337 and order some from of relief, that relief would not become final for a 60-day period during which the President would consider the Commission's report. During this period, the certain centrifugal trash pumps would be entitled to enter the United States under a bond determined by the Commission and prescribed by the Secretary of the Treasury. Accordingly, the Commission is interested in what bond should be determined, if any.

3. *The public interest.*—In the event that the Commission were to find a violation of section 337 and order some form of relief, the Commission must consider the effect of that relief upon the public interest. Accordingly, the Commission is interested in the effect of any exclusion order or cease and desist order upon (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) the production of like or directly competitive articles in the United States, and (4) U.S. consumers.

A party to the Commission's investigation, an interested agency, a public interest group, or any interested person wishing to make an oral presentation concerning relief, bonding, and the public interest will be limited to no more than 15 minutes. Participants will be permitted an additional 5 minutes each for summation after all presentations have been made. Participants with similar interests may be required to share time. The order of oral presentations will be as follows: Complainant, respondents, interested agencies, public interest groups, other interested members of the public, and Commission investigative staff. Summations will follow the same order.

How to participate in the hearing.—If you wish to appear at the Commission's hearing, you must file a written request to appear with the Secretary to the Commission, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, no later than the close of business (5:15 p.m., e.s.t.) on Friday, December 1, 1978. Your written request must indicate whether you wish to present an oral argument concerning the presiding officer's recommendation or an oral presentation concerning relief, bonding and the public interest, or both. While only parties to the Commission's investigation, interested agencies, and the Commission investigative staff may present an oral argument concerning the presiding officer's recommendation, public interest groups and other interested members of the public are encouraged to make an oral presentation concerning the public interest.

Written submissions to the Commission.—The Commission requests that written submissions of two types be filed prior to the hearing in order to focus the issues and facilitate the orderly conduct of the hearing.

1. *Briefs on the presiding officer's recommendation.*—Parties to the Commission's investigation, interested agencies, and the Commission investigative staff are encouraged to file briefs concerning exceptions to the presiding officer's recommendation. Prehearing briefs must be filed with the Secretary to the Commission by no later than the close of business on Friday, December 1, 1978. Briefs must be served on all parties of record to the investigation or or before the date they are filed with the Secretary. Statements made in briefs should be supported by references to the record. Persons with the same positions are encouraged to consolidate their briefing, if possible.

2. *Written comments and information concerning relief, bonding, and the public interest.*—Parties to the Commission's investigation, interested agencies, public interest groups, and any other interested members of the public are encouraged to file written comments and information concerning relief, bonding, and the public interest. These written submissions will be very useful to the Commission in the event it determines that there is a violation of section 337 and that relief should be granted.

Written comments and information concerning relief, bonding, and the public interest shall be submitted in this order. First, complainant shall file a detailed proposed Commission action, including a proposed determination of bonding, a proposed remedy, and a discussion of the effect of its proposals on the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, with the Secretary to the Commission by no later than the close of business on Friday, November 24, 1978. Second, other parties, interested agencies, public interest groups, and other interested members of the public shall file written comments and information concerning the action which complainant has proposed, any available alternatives, and the advisability of any Commission action in light of the public interest considerations listed above by no later than the close of business on Wednesday, December 6, 1978.

Additional information.—The original and 19 true copies of all written submissions must be filed with the Secretary to the Commission. If you wish to submit a document (or a portion thereof) to the Commission in confidence, you must request "in camera" treatment. Your request should be directed to the Chairman of the Commission and must include a full statement of the reasons for granting "in camera" treatment. The Commission will either accept such submission in confidence, or it will return the submission to you. All nonconfidential written submissions will be open to public inspection at the Secretary's Office.

Notice of the Commission's investigation was published in the Federal Register of February 14, 1978 (43 F.R. 6342).

By order of the Commission:

Issued: November 15, 1978.

KENNETH R. MASON,
Secretary.

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